TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, [redacted] 1926

No. [redacted] 108

CHARLES V. DUFFY, FORMER COLLECTOR OF INTERNAL REVENUE, PETITIONER

vs.

THE MUTUAL BENEFIT LIFE INSURANCE COMPANY

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

PETITION FOR CERTIORARI FILED MAY 11, 1926.
CERTIORARI GRANTED JUNE 1, 1926.

(31168)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1924.

No. 1203

CHARLES V. DUFFY, FORMER COLLECTOR OF INTERNAL REVENUE, PETITIONER

vs.

THE MUTUAL BENEFIT LIFE INSURANCE COMPANY

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

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In United States District Court District of New Jersey

MUTUAL BENEFIT LIFE INSURANCE COMPANY vs. CHARLES V. DUFFY, COLLECTOR OF INTERNAL revenue for the Fifth District of New Jersey	At law, No. 2618

Docket entries

July 24, 1920	Petition for removal by certiorari filed.
" " "	Order allowing writ of certiorari filed.
" " "	Writ of certiorari issued.
" 29, "	Return to writ of certiorari filed.
Nov. 18, "	Amended complaint filed.
" 22, "	Motion to strike out complaint filed.
July 21, 1921	Order amending complaint filed.
Apr. 30, 1923	Order amending complaint filed.
May 9, "	Amended complaint filed.
Feb. 4, 1924	Order amending complaint filed.
" 19, "	Opinion filed.
" 26, "	Order denying motion to strike out complaint and for judgment filed.
Mar. 5, "	Certificate of probable cause filed.
Apr. 17, "	Order extending time to file bill of exceptions filed.
" 28, "	Exceptions filed.
" " "	Assignments of error filed.
" " "	Petition for writ of error filed.
" " "	Order allowing writ of error filed.
" " "	Writ of error issued; copy filed.
" " "	Citation issued.
May 5, "	Citation returned; service acknowledged; copy filed.

2 In United States District Court

[Title omitted.]

Amended complaint

The plaintiff, a corporation duly organized under the laws of the State of New Jersey and having its principal office and place of business in the city of Newark in said State, says that:

1. Plaintiff was incorporated and continues as a mutual life insurance company by charter granted by the State of New Jersey in

1845 which provided "that all persons who shall at any time hereafter insure in or with the said association shall, while they continue so insured, be deemed and taken as members of the said corporation; and that the property and concerns of the said corporation shall be conducted and managed by twelve directors * * * to be chosen, by ballot, by and from among the members" and "that it shall and may be lawful for the said corporation to insure their
respective lives, and to make all and every insurance ap-
3 pertaining to or connected with life risks of whatever kind or
nature. It is a mutual company. It has no capital stock and no stockholders. It never has been and is not now engaged in any other business than that of mutual life insurance. A copy of the plaintiff's charter and of its by-laws as they were on January 1, 1917, marked Exhibit No. 1, is hereto annexed and made part hereof.

2. The plaintiff's assets have all been contributed by its members in the form of premiums on policy contracts. A statement of the total receipts and disbursements on account of these since the incorporation of the plaintiff, and the balance remaining December 31, 1916, and used in its business during the year 1917, is shown on Schedule A hereto annexed and made part hereof.

Its assets are invested in its office building and in Government, municipal, railroad, and utility bonds, bonds secured by mortgages on real estate, and loans to policyholders and on collateral, and in foreclosed real estate, as is shown in Schedule B hereto annexed and by reference made part hereof. The average rate of interest or return on its invested assets is and for many years has been less than six per cent per annum. None of its assets during the year 1917 yielded an income in excess of six per centum per annum. A tabulation of the interest so received during the year 1917 is hereto annexed as Schedule C and made part hereof.

3. The plaintiff is a purely mutual company and has always conducted its business of life insurance on what is generally known as the "level premium plan" as distinguished from the "pure-assessment plan" under which the loss payable on the death of a member is, after the event, contributed pro rata by the surviving members, and from the "natural-premium plan" under which each member
contributes each year the cost of carrying his insurance for
4 that year, which cost increases yearly as his age increases.
Under the level-premium plan the estimated annual cost of each member's insurance is averaged and the maximum annual contribution which he can be called upon to make is uniform throughout the life of the policy. The member contributes annually during his early years a sum in excess of the natural premium. Such excess contributions augmented by interest thereon are held by the company as a reserve which serves to maintain his insurance in his later years when the stipulated level premium would otherwise be insufficient to meet the current cost of insurance. (An exhibit showing a comparison of natural and level premiums and the annual increase in

the reserve is hereto annexed as Schedule D and made part hereof.) The premiums referred to above are the "net" or mathematical premiums without any provision for expenses or contingencies, which are met out of an addition to the net premium called "loading." The net or mathematical premium increased by the loading constitutes the premium rate stipulated in the policy of insurance. At the end of each year the excess of income over disbursements is ascertained, and, after setting aside so much of said excess as is required by law for the increase in policy reserves, each policyholder's share in the balance is ascertained and returned to him, either in cash or by credit upon his next annual premium, as he may elect.

4. The laws of the State of New Jersey and of all other States in which the plaintiff is doing business require, as a condition precedent to the continued transaction of business of a life insurance company, that its assets shall not be less than the reserve required by law. In the plaintiff's management of its assets there is no segregation or special allocation of any part thereof. They constitute one general fund. The reserve is not earmarked or separately invested. The interest earned on all securities not specifically exempt from
5 tax is included in plaintiff's returns of gross income for Federal income-tax purposes.

5. The amount of reserve for which the plaintiff is required to hold assets is computed annually by the commissioner of banking and insurance of the State of New Jersey. His certificate is accepted by the insurance commissioners of all other States in which the plaintiff does business, with the exception of the insurance commissioner of Massachusetts, who makes an independent calculation.

In computing life insurance reserves two methods are used. They produce the same results. Both are based upon an assumed rate of mortality and an assumed rate of interest. One is known as the "retrospective method," because it deals with what has occurred in the past on the basis of these assumptions. The other is known as the "prospective method," because it deals with what is expected to occur in the future on the basis of the same assumptions. They are illustrated in Schedule E hereto annexed and made part hereof.

6. The reserve required by law as computed by the commissioner of banking and insurance of the State of New Jersey was on January 1, 1909, the sum of $110,124,750.07, and on January 1, 1913, was $144,153,942.69. On January 1, 1917, it was $186,258,796.00. As computed by the Massachusetts insurance department, the reserve was as follows: On January 1, 1909, $110,080,452.07; on January 1, 1913, $143,393,732.69; on January 1, 1917, $185,638,632.00.

The net addition made each year to the plaintiff's reserve from the date of its incorporation to December 31, 1917, and the minimum part thereof that was derived each year from premiums paid by the policyholders, and the maximum part thereof that was derived each year from interest earned on its reserve, with the total of the
6 reserve at the end of each year, is correctly set forth in Schedule F hereto annexed and hereby made a part of this com-

plaint, as well as the total of such premium contributions, and such interest contributions at the end of the years 1908, 1910, 1911, 1912, 1916, and 1917; and, in particular, plaintiff says, that its reserve required by law on January 1, 1909, was the sum of $110,124,750.07, of which sum not less than $33,569,857.14 consisted of premiums paid in by its policyholders and not more than $76,554,892.93 consisted of interest earned on the investment of its reserve; plaintiff's reserve on January 1, 1911, was $125,154,485.70, of which sum not less than $39,979,811.50 consisted of premiums paid in by its policyholders, and not more than $85,174,674.20 consisted of interest earned on the investment of its reserve; plaintiff's reserve on January 1, 1912, was $135,464,075.15, of which sum not less than $45,591,484.45 consisted of premiums paid in by its policyholders, and not more than $89,872,590.70 consisted of interest earned on the investment of its reserve; plaintiff's reserve on January 1, 1913, was $144,153,942.69, of which sum not less than $49,610,074.71 consisted of premiums paid in by its policyholders, and not more than $94,543,867.98 consisted of interest earned on the investment of its reserve; plaintiff's reserve on January 1, 1917, was $186,258,796.00, of which sum not less than $70,302,157.10 consisted of premiums paid in by its policyholders, and not more than $115,956,638.90 consisted of interest earned on the investment of its reserve; plaintiff's reserve on January 1, 1918, was $200,815,927.00, of which sum not less than $78,638,717.11 consisted of premiums paid in by its policyholders, and not more than $122,177,209.89 consisted of interest earned on the investment of its reserve.

7 7. A policyholder of the plaintiff, while he continues a member of the company, has no right to withdraw any part of the reserve. On ceasing to be a member of the company and surrendering his policy for cancellation he may, ordinarily, at his option, receive a certain sum in cash or in paid-up policy in reduced amount or extended insurance for the full amount for a limited period. Any allowance thus made is never in excess of the reserve. It is generally less, and in some circumstances no allowance at all is made.

8. The defendant was at all times hereinafter mentioned and still is collector of internal revenue for the fifth district of New Jersey.

9. The defendant, by virtue of his said office and assuming to act under the statutes of the United States and more especially under the act of Congress of the United States entitled "An act to provide revenue, to defray war expenses, and for other purposes," approved October 3, 1917, and under Title II thereof, relating to the war excess profits tax, did unlawfully demand of, and by force and duress, collect from the said plaintiff, for war excess profits taxes for the taxable year 1917 the sum of $83,779.70 on the 18th day of June, 1920.

10. The plaintiff involuntarily and under duress and threats of penalties and distraint against its property in case of its refusal to pay said sum was compelled to and did pay to said defendant said

sum at the time aforesaid, then protesting that it was not liable to pay the same or any part thereof, and that the said tax was erroneously, illegally, and wrongfully assessed and collected.

11. The assessment and collection of said tax was illegal for the following reason:

In determining the liability of the plaintiff to pay such tax, and the amount thereof, defendant computed plaintiff's invested capital for the year 1917 at $14,719,043.76, and allowed the plaintiff
8 under the provisions of section 203 (a) (1) of the revenue act of 1917 as a deduction from its net income for the year 1917 a sum equal to 9 per cent of $14,719,043.76—namely, $1,324,713.94. Defendant refused to permit the plaintiff to include as part of its invested capital in addition to the sum of $14,719,043.76 the reserve of $186,258,796.00 held by the plaintiff as required by law for the fulfillment of its obligations upon its outstanding policy contracts, and plaintiff claims that by reason thereof it was not allowed the full deduction provided for in section 203 (a) (1) of said law. If this reserve of $186,258,796.00 had been allowed as part of plaintiff's invested capital, no war excess profits tax would have been due.

If on any computation plaintiff's invested capital had been ascertained at a sum in excess of $25,500,000.00, no war excess profits tax would have been due.

12. In further explanation of its claim that said tax was unlawfully assessed and collected, the plaintiff says that:

In pursuance of Title II of the act of Congress of October 3, 1917, imposing a war excess profits tax, plaintiff duly filed its return for the year 1917, showing that under plaintiff's construction of the act it was not subject to a war excess profits tax for the year 1917.

Plaintiff's return of net income for the year 1917 made in pursuance of Title I of the act of Congress of September 8, 1916, as amended, showed a net income of $1,808,339.33, on which it paid an income tax of $108,500.36.

Afterwards, on June 10, 1920, the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, amended the income tax and war excess profits tax returns of the plaintiff for the year 1917 in the several respects set forth below and thereupon levied an assessment against the plaintiff for the year 1917 amounting to $83,779.70.

9 The amendments so made of plaintiff's returns for the year 1917 were as follows:

1. Plaintiff's net income was reduced from $1,808,339.33 to $1,781,815.64, or by the sum of	$26,523.69
2. Plaintiff's invested capital for the taxable year was reduced from $202,685,846.45 to $14,719,043.76, as follows:	
(a) Various adjustments of which plaintiff does not complain reduced the invested capital for the taxable year by the sum of	$1,708,006.69
(b) Plaintiff's invested capital for the taxable year was further reduced by the amount of the policy reserve required for the fulfillment of plaintiff's existing policy contracts, said reserve amounting to	$186,258,796.00

3. Plaintiff did not set forth in its war excess profits tax return the pre-war invested capital or the pre-war net income, and in consequence thereof claimed the minimum deduction of 7% of the invested capital for the taxable year. In amending plaintiff's return $10,115,170.28 was allowed as invested capital for 1911, $8,988,187.41 for 1912, and $9,869,230.99 for 1913. The average was $9,657,529.56. In determining the invested capital thus allowed the policy reserve required for the fulfillment of plaintiff's existing policy contracts was
10 excluded. Said reserve was $124,998,938.70 for 1911, $135,338,211.15 for 1912, and $144,037,583.69 for 1913. The average pre-war taxable income was $869,678.46 or 9.005% of what was allowed as invested capital. The percentage of invested capital to be used by the plaintiff in ascertaining the amount to be deducted from the net income of the taxable year for war excess profits tax purposes was therefore increased from 7% to 9%.

4. In consequence of the above adjustments plaintiff was

assessed with an income tax of	$101,459.72
And a war excess profits tax of	890,820.34
Making in all	$192,280.06
The original tax paid was	$108,500.36
The additional tax demanded and paid was	883,779.70

for the recovery of which this suit is brought.

The aforesaid deduction from plaintiff's invested capital for the taxable year of the sum of $186,258,796, representing the reserve required for the fulfillment of the plaintiff's existing policy contracts, is the basis of plaintiff's complaint.

Plaintiff hereto annexes as Schedule G, and hereby makes a part of this complaint, a copy of its income tax return for the year 1917, omitting detailed schedules, showing the changes made therein by the Commissioner of Internal Revenue; also as Schedule H, a copy of plaintiff's war excess profits tax return for the year 1917, showing the changes made therein by the Commissioner
11 of Internal Revenue as aforesaid; and also, as Schedule I, a detailed statement of the changes in plaintiff's tax returns described above; and also, as Schedule J, a comparative statement of income and deductions and net income shown on the income tax returns as filed by the Mutual Benefit Life Insurance Company and as adjusted by the Internal Revenue Department for the years 1911 to 1918, both inclusive, and showing in two additional columns for the years 1917 and 1918 what the returns for those years would have been if made on the same basis as the previous years, omitting certain self-balancing bookkeeping items which plaintiff was required by the Government to include in its returns for the years 1917 and 1918, but which were not required to be included in the returns for the previous years.

13. The plaintiff, on the 22d day of June, 1920, duly demanded from said defendant the repayment of said sum of money, with interest, because of said illegality and wrongful assessment and collection; and repayment thereof was refused by said defendant.

14. The plaintiff on the 23d day of June, 1920, pursuant to the act of Congress in such case made and provided, caused an appeal to

be made to the Commissioner of Internal Revenue, according to the provisions of law in that regard and the regulations of the Secretary of the Treasury established in pursuance thereof; and the said appeal was, on the 23d day of June, 1920, decided and disallowed by the said commissioner, and no part of said money so paid by plaintiff has been refunded.

Plaintiff demands as damages $83,779.70, with interest thereon from June 18, 1920.

PITNEY, HARDIN & SKINNER,
Attorneys for Plaintiff.

12 *Exhibits to amended complaint*

SCHEDULE A

Since organization and up to December 31, 1916, the contributions (premiums) of the members of the plaintiff corporation amounted to		$515,941,896.66
The amount returned to the members of the corporation, including dividends applied in reduction of the above premiums, amounted to	$393,056,658.53	
The expenses of management amounted to	90,032,445.11	
	483,089,103.64	
The interest and other earnings amounted to	165,860,038.15	
Amount returned to members of the corporation and used for expenses of management in excess of the interest and other earnings	317,229,065.49	317,229,065.49
Actual cash paid in by the members of the corporation from the date of its organization to December 31, 1916, and the balance then remaining and used in its business during the year beginning January 1, 1917		198,712,831.17

13 SCHEDULE B

Schedule of plaintiff's assets December 31, 1916

Cash on hand and in banks	$3,418,528.80
Loans on collateral	3,100,000.00
United States and other bonds (includes State and municipal bonds to the extent only of $4,171,901.33)	55,028,340.71
First bonds and mortgages on real estate	96,167,300.00
Real estate	2,874,753.15
Loans on policies in force	38,102,183.77
Agents' balances	5,569.11
Railroad stock acquired in reorganization	17,250.00
	*198,713,925.54

December 31, 1917

Cash on hand and in banks	$4,238,727.23
Loans on collateral	2,800,000.00
Liberty loan bonds	3,927,500.00
Other bonds (includes State and municipal bonds to the extent only of $4,239,901.33)	54,970,822.99
First bonds and mortgages on real estate	106,345,221.05

* Includes $1,094.37 income taxes "withheld at source" during 1916 and paid in 1917.

Real estate	$2,859,938.81
Loans on policies in force	39,642,904.30
Agents' balances	6,232.27
Railroad stock acquired in reorganization	17,250.00
	214,808,596.65

14 SCHEDULE C

During the calendar year 1917 the plaintiff received interest as follows:

On cash in banks	882,616.87
On loans on collateral	106,487.94
On United States and other bonds (includes interest on State and municipal bonds to the extent only of $175,246.14)	2,471,552.30
On first bonds and mortgages on real estate	5,077,767.37
Rents	103,633.39
On policy loans	2,288,234.89
On agents' balances	559.70
Discount on claims paid in advance	5.15
	*10,130,857.61

15 SCHEDULE D

The following table sets forth the net natural premium required for an insurance of $1,000 at the ages stated, and the net level premium for an ordinary life policy of $1,000 issued at age 35, and also the reserve on the ordinary life policy.

NOTE.—The "net" premium does not include any provision for expenses or contingencies.

Age	Natural premium	Level premium	Reserve
35	$8.68	$21.08	$12.88
36	8.81	21.08	26.13
37	8.97	21.08	39.76
38	9.12	21.08	53.77
39	9.30	21.08	68.16
40	9.50	21.08	82.94
41	9.71	21.08	98.11
42	9.95	21.08	113.68
43	10.21	21.08	129.65
44	10.51	21.08	146.01
45	10.83	21.08	162.76
55	18.03	21.08	347.00
57	20.70	21.08	386.14
58	22.26	21.08	405.81
65	38.95	21.08	541.94
75	91.62	21.08	713.87
85	228.69	21.08	857.47
95	970.87	21.08	1,000.00

16 SCHEDULE E

CALCULATION OF RESERVE

Retrospective method

The following table sets forth the calculation of the reserve by the retrospective method for an ordinary life policy of $1,000 issued at

* Of this total, only $6,220,570.99 was required for and applied to the addition to the reserve in the year 1917.

age 35 on the basis adopted and used by the plaintiff, viz, the American Experience Table of Mortality and 3% interest:

(1) Age	(2) Reserve (beginning of year)	(3) Interest	(4) Sum of (2) and (3)	(5) Contribution to death losses	(6) Reserve (end of year)
5					
36	$21.08	$0.63	$21.71	$8.83	$12.88
37	33.96	1.02	34.98	8.85	26.13
38	47.21	1.42	48.63	8.87	39.76
39	60.84	1.83	62.67	8.90	53.77
30	74.85	2.25	77.10	8.94	68.16
41	89.24	2.68	91.92	8.98	82.94
42	104.02	3.12	107.14	9.03	98.11
43	119.19	3.58	122.77	9.09	113.68
44	134.76	4.04	138.80	9.15	129.65
45	150.73	4.52	155.25	9.24	146.01
45	167.09	5.01	172.10	9.34	162.76
55	348.66	10.46	359.12	12.12	347.00
65	544.00	16.32	560.32	18.38	541.94
75	719.29	21.58	740.87	27.00	713.87
85	865.09	25.95	891.04	33.57	857.47
	970.87	29.13	1,000.00		1,000.00

Prospective method

The following table sets forth the calculation of the reserve by the prospective method for an ordinary life policy of $1,000 issued at age 35 on the basis adopted and used by the plaintiff, viz, the American Experience Table of Mortality and 3% interest:

Age	Present value of insurance	Present value of future premiums	Difference = reserve (end of year)
35			
36	$427.36	$414.48	$12.88
37	435.04	408.91	26.13
38	442.95	403.19	39.76
39	451.07	397.30	53.77
40	459.42	391.26	68.16
41	468.00	385.06	82.94
42	476.80	378.69	98.11
43	485.83	372.15	113.68
44	495.10	365.45	129.65
45	504.58	358.57	146.01
55	514.30	351.54	162.76
65	621.18	274.18	347.00
75	734.27	192.33	541.94
85	834.01	120.14	713.87
95	917.32	59.85	857.47
	1,000.00	0	1,000.00

17

SCHEDULE F

Yearly net addition to reserve

Year (1)	From premium (2)	From interest (3)	Total (4)	Reserve at end of year (5)
1845 & 1846	$19,645.05	$607.58	$20,252.63	$20,252.63
1847	71,815.73	2,292.27	74,108.00	94,360.63
1848	86,056.34	5,607.71	91,664.05	186,024.68
1849	179,048.56	11,246.90	190,295.46	376,320.14
1850	108,373.49	17,571.71	125,945.20	502,265.34
1851	131,632.76	23,187.01	154,819.77	657,085.11
1852	121,609.29	29,301.62	150,910.91	807,996.02
1853	329,383.20	39,701.54	369,084.74	1,177,080.76
1854	104,858.57	50,184.08	155,042.65	1,332,123.41
1855	101,318.54	56,440.11	157,758.65	1,489,882.06
1856	108,893.15	63,033.82	171,926.97	1,661,809.03
1857	117,450.28	70,225.88	187,676.16	1,849,485.19
1858	104,580.79	77,623.49	182,204.28	2,031,689.47
1859	177,948.54	86,557.70	264,506.24	2,296,195.71
1860	183,614.40	97,469.51	281,083.91	2,577,279.62
1861	−156,634.62	101,998.46	−54,636.16	2,522,643.46
1862	−305,218.87	96,736.08	−208,482.79	2,314,160.67
1863	355,336.64	101,707.31	457,043.95	2,771,204.62
1864	737,333.89	128,158.02	865,491.91	3,636,696.53
1865	1,416,271.85	177,340.10	1,593,611.95	5,230,308.48
1866	1,446,166.05	242,995.57	1,689,161.62	6,919,470.10
1867	1,362,009.78	310,223.47	1,672,233.25	8,591,703.35
1868	2,984,632.93	411,592.65	3,396,225.58	11,987,928.93
1869	2,014,049.44	530,406.27	2,544,455.71	14,532,384.64
1870	1,812,692.88	630,152.29	2,442,845.17	16,975,229.81
1871	1,948,286.71	732,627.48	2,680,914.19	19,656,144.00
1872	1,548,056.42	833,884.58	2,381,941.00	22,038,085.00
1873	1,210,862.84	924,225.16	2,135,088.00	24,173,173.00
1874	830,495.98	1,003,609.02	1,834,105.00	26,007,278.00
1875	682,502.82	1,075,450.18	1,757,953.00	27,765,231.00
1876	121,382.08	1,135,751.92	1,257,134.00	29,022,365.00
1877	−172,433.28	1,181,067.28	1,008,634.00	30,030,999.00
1878	−1,056,373.42	1,204,196.42	147,823.00	30,178,822.00
1879	−823,581.86	1,214,980.86	391,399.00	30,570,221.00
1880	−608,574.24	1,235,344.24	626,770.00	31,196,991.00
1881	−409,361.26	1,264,992.26	855,631.00	32,052,622.00
1882	−438,631.62	1,299,318.62	860,687.00	32,913,309.00
1883	−271,572.08	1,337,858.08	1,066,286.00	33,979,595.00
1884	−310,032.00	1,380,595.00	1,070,563.00	35,050,158.00
1885	−435,422.52	1,421,732.52	986,310.00	36,036,468.00
1886	−322,285.96	1,464,298.96	1,142,013.00	37,178,481.00
1887	−355,375.48	1,510,236.48	1,154,861.00	38,333,342.00
1888	−188,066.12	1,560,788.12	1,372,722.00	39,706,064.00
1889	76,444.04	1,622,215.96	1,698,660.00	41,404,724.00
1890	104,387.92	1,692,119.08	1,796,507.00	43,201,231.00
18 1891	11,530.16	1,763,550.84	1,775,081.00	44,976,312.00
1892	445,448.40	1,844,858.60	2,290,307.00	47,266,619.00
1893	63,878.60	1,930,553.40	1,994,432.00	49,261,051.00
1894	34,403.74	2,011,357.26	2,045,761.00	51,306,812.00
1895	115,339.56	2,096,509.44	2,211,849.00	53,518,661.00
1896	−48,225.38	2,183,119.08	2,134,893.70	55,653,554.70
1897	145,750.50	2,274,602.16	2,420,352.66	58,073,907.36
1898	449,541.14	2,379,543.06	2,829,084.20	60,902,991.56
1899	601,195.90	2,498,090.67	3,099,286.57	64,002,278.13
1900	767,044.54	2,625,958.88	3,393,003.42	67,395,281.55
1901	923,008.54	2,767,398.65	3,690,407.19	71,085,688.74
1902	1,324,210.64	2,923,277.72	4,247,488.36	75,333,177.10
1903	1,429,633.68	3,094,687.20	4,524,320.88	79,857,497.98
1904	2,021,797.58	3,168,163.31	5,189,960.89	85,047,458.87
1905	2,076,269.53	3,350,826.12	5,427,095.65	90,474,554.52
1906	2,788,555.93	3,530,490.89	6,319,046.82	96,793,601.34
1907	2,860,098.81	3,727,343.45	6,587,442.26	103,381,043.60
1908	2,816,797.64	3,926,908.83	6,743,706.47	110,124,750.07
1909	3,111,600.50	4,117,444.38	7,229,044.88	117,353,794.95
1910	3,298,353.86	4,502,336.89	7,800,690.75	125,154,485.70
1911	5,611,672.95	4,697,916.50	10,309,589.45	135,464,075.15
1912	4,018,590.26	4,671,277.28	8,689,867.54	144,153,942.69
1913	4,629,167.97	4,912,910.35	9,542,078.32	153,696,021.01
1914	4,559,438.82	5,175,146.70	9,734,585.52	163,430,606.53
1915	4,834,852.36	5,468,361.11	10,303,213.47	173,733,820.00
1916	6,668,623.24	5,856,352.76	12,524,976.00	186,258,796.00
1917	8,336,560.01	6,220,570.99	14,557,131.00	200,815,927.00

SCHEDULE G

ORIGINAL RETURN

[Form 1030 (Revised January, 1918).—United States Internal Revenue]

INSURANCE COMPANY RETURN

(Including Mutual Life and Mutual Marine)

Return of annual net income for the calendar year 1917.
Name of company, The Mutual Benefit Life Insurance Company.
Principal office, 750 Broad Street, Newark, N. J.
Kind of business carried on, life insurance.

Date of organization, 1845.

1. Total amount of paid-up capital stock outstanding at the close of the year, or if there is no capital stock the capital other than interest-bearing indebtedness employed in the business at the close of the year. Unissued or treasury stock must not be included in this item, but only stock actually issued and outstanding at the close of the year for which this return is made.	(a) Paid-up "common stock"	$ 0
	(b) Paid-up "preferred stock"	0
	Total paid-up stock	$ 0
	or (c) Capital employed in business	$214,808,596.65

2. Total amount of bonded or other interest-bearing indebtedness outstanding at the close of the year, exclusive of indebtedness wholly secured by collateral the subject of sale or hypothecation in the ordinary business of the company and exclusive also of indebtedness incurred in the purchase of securities, the income from which is not subject to income tax.

Character of obligation.	Rate of interest.	Principal.
		$
Total indebtedness		$ 0

INCOME

3. (a) From premiums		831,788,744.28
(b) Income from rentals		103,433.39
(c) Income from interest (see item 3c on back of return)		9,821,630.74
(d) Income from dividends (see item 3d on back of return)		0
(e) Income from all other sources (see item 3e on back)		1,179,556.54
Total gross income		$42,893,564.95
Less total deductions		41,085,225.62
8. Total net income		$1,808,339.33
Less: (a) Excess profits tax (item 12)	$ 0	
(b) Dividends received out of earnings of 1913, 1914, 1915	$ 0	
Total (a plus b)		0
9. (a) Amount taxable at 2% (item 8 less total of a plus b)		$1,808,339.33
(b) Amount taxable at 1% (item 8b)		0
10. Amount of total net income shown in item 8		1,808,339.33
Less: (a) Excess profits tax (item 12)	$ 0	
(b) Dividends received (item 3d)	0	
Total (a plus b)		0
11. Amount taxable at 4% (item 10 less total of a plus b)		$1,808,339.33
If return is made for a full fiscal year ended in 1917, compute tax on as many twelfths of item 11 as there are months from January 1, 1917, to the close of the fiscal year. Enter amount taxable here	$ 0	

DEDUCTIONS

4. Expenses, general	85,066,570.54
5. (a) Losses charged off (other than policy payments)	38,527.30
(b) Depreciation charged off	25,814.58
(c) Payments on policies	20,669,808.48
(d) Net addition to reserve fund	14,357,131.00
(e) Mutual marine premiums repaid with interest	0
6. (a) Interest actually paid, except as entered under 6b	0
(b) Interest paid on indebtedness wholly secured by collateral	0
7. (a) Domestic taxes paid, not including income and excess profits taxes	787,373.72
(b) Foreign taxes paid	0
Total deductions	$41,085,225.62

TAX

12. Amount of excess profits tax (see instructions below)	$	0
13. Amount of 2% tax (2% of item 9a)		36,166.79
14. Amount of 1% tax (1% of item 9b)		0
15. Amount of 4% tax (4% of item 11)		72,333.57
16. Total tax assessable		$108,500.36

Copy of above return as amended by Commissioner of Internal Revenue, changes shown in black type

1. Total amount of paid-up capital stock outstanding at the close of the year, or if there is no capital stock the capital other than interest-bearing indebtedness employed in the business at the close of the year. Unissued or treasury stock must not be included in this item, but only stock actually issued and outstanding at the close of the year for which this return is made.	(a) Paid-up "common stock"	$ 0
	(b) Paid-up "preferred stock"	0
	Total paid-up stock	$ 0
	or (c) Capital employed in business	$214,808,596.65

9. (a) Amount taxable at 2% (item 8 less total of a plus b)		$1,808,339.33
(b) Amount taxable at 1% (item 8b)		0
10. Amount of total net income shown in item 8		1,808,339.33
Less: (a) Excess profits tax (item 12)	$ 0	
(b) Dividends received (item 3d)	0	
Total (a plus b)		0
11. Amount taxable at 4% (item 10 less total of a plus b)		$1,808,339.33
If return is made for a full fiscal year ended in 1917, compute tax on as many twelfths of item 11 as there are months from January 1, 1917, to the close of the fiscal year. Enter amount taxable here		$ 0

Tax

12. Amount of excess profits tax (see instructions below)		$ 0
13. Amount of 2% tax (2% of item 9a)		36,166.79
14. Amount of 1% tax (1% of item 9b)		0
15. Amount of 4% tax (4% of item 11)		72,333.57
16. Total tax assessable		$108,500.36

Copy of above return as amended by Commissioner of Internal Revenue, changes shown in black type

1. Total amount of paid-up capital stock outstanding at the close of the year, or if there is no capital stock the capital other than interest-bearing indebtedness employed in the business at the close of the year. Unissued or treasury stock must not be included in this item, but only stock actually issued and outstanding at the close of the year for which this return is made.

(a) Paid-up "common stock"	$	0
(b) Paid-up "preferred stock"		0
Total paid-up stock	$	0
or (c) Capital employed in business		$214,808,596.65

2. Total amount of bonded or other interest-bearing indebtedness outstanding at the close of the year, exclusive of indebtedness wholly secured by collateral the subject of sale or hypothecation in the ordinary business of the company and exclusive also of indebtedness incurred in the purchase of securities, the income from which is not subject to income tax.

Character of obligation.	Rate of interest.	Principal.
		$
Total indebtedness		$ 0

Income

3. (a) From premiums		$31,788,744.28
(b) Income from rentals		103,633.39
(c) Income from interest (see item 3c on back of return)		9,821,630.74
(d) Income from dividends (see item 3d on back of return)		0
(e) Income from all other sources (see item 3e on back)		1,179,556.54
Total gross income		$42,893,564.95
Less total deductions		**41,111,749.31**
8. Total net income		**$1,781,815.64**
Less: (a) Excess profits tax (item 12)	**$90,820.34**	
(b) Dividends received out of earnings of 1913, 1914, 1915	$ 0	
Total (a plus b)		**90,820.34**
9. (a) Amount taxable at 2% (item 8 less to total of a plus b)		**$1,690,995.30**
(b) Amount taxable at 1% (item 8b)		0
10. Amount of total net income shown in item 8		**$1,781,815.64**
Less: (a) Excess profits tax (item 12)	**$90,820.34**	
(b) Dividends received (item 3d)	0	
Total (a plus b)		**90,820.34**
11. Amount taxable at 4% (item 10 less total of a plus b)		**$1,690,995.30**
If return is made for a full fiscal year ended in 1917, compute tax on as many twelfths of item 11 as there are months from January 1, 1917, to the close of the fiscal year. Enter amount taxable here		0

Deductions

4. Expenses, general	$5,006,570.54
5. (a) Losses charged off (other than policy payments)	38,527.30
(b) Depreciation charged off	**52,338.27**
(c) Payments on policies	20,669,808.48
(d) Net addition to reserve fund	14,557,131.00
(e) Mutual marine premiums repaid with interest	0
6. (a) Interest actually paid, except as entered under 6b	0
(b) Interest paid on indebtedness wholly secured by collateral	0
7. (a) Domestic taxes paid, not including income and excess profits taxes	787,373.72
(b) Foreign taxes paid	0
Total deductions	**$41,111,749.31**

Tax

12. Amount of excess profits tax (see instructions below)	**$90,820.34**
13. Amount of 2% tax (2% of item 9a)	**33,819.91**
14. Amount of 1% tax (1% of item 9b)	0
15. Amount of 4% tax (4% of item 11)	**67,639.81**
16. Total tax assessable	**$192,280.06**

SCHEDULE H

ORIGINAL RETURN

[Form 1103—United States Internal Revenue]

CORPORATION EXCESS PROFITS TAX RETURN

Taxable year ended December 31, 1917

Name, The Mutual Benefit Life Insurance Company.
Business address, 750 Broad Street, Newark, N. J.

Kind of business, Life Insurance. Date established, 1845, Jan. 31.

SCHEDULE I.—NET INCOME FOR TAXABLE YEAR SUBJECT TO EXCESS PROFITS TAX

1.	Net income for taxable year shown in Item 8, Form 1030		$1, 808, 339. 33
2.	Plus interest on obligations of the United States issued since September 24, 1917, held by corporation in excess of $5,000 par value		0
3.	Total		1, 808, 339. 33
4.	Less (a) Dividends received as shown in Item 3d, Form 1030	$ 0	
5.	(b) Interest paid (not in excess of legal limit) on indebtedness incurred for purchase of obligations reported in item 2, above	0	0
6.	Net income subject to excess profits tax		$1, 808, 339. 33

SCHEDULE II.—INVESTED CAPITAL

Item	1911	1912	1913	Taxable year
1. Capital, surplus, and undivided profits at the close of the preceding year as shown by corporation's books before making any adjustments therein (from Schedule A)	$	$	$	$198, 712, 831. 17
2. Adjustments by way of additions (from Schedule B)				
3. Total	$	$	$	$198, 712, 831. 17
4. Adjustments by way of deductions (from Schedule C)				4, 171, 901. 33
5. Invested capital at beginning of year (Item 3 less Item 4)	$	$	$	$194, 540, 929. 84
6. Changes in invested capital during year (from Schedules D and E)				8, 144, 916. 61
7. Invested capital for year	$	$	$	$202, 685, 846. 45
8. Total invested capital for pre-war period				$

SCHEDULE III.—DEDUCTION

1.	Percentage—net income to invested capital for pre-war period (Item 6, Schedule F, divided by Item 8, Schedule II). Carry out result as far as desired, but drop the remainder, if any, without increasing the last figure of the percentage	%
2.	Percentage to be used in computing deduction (see Instruction 5)	7%
3.	Amount of deduction computed at above rate on invested capital for taxable year	$14, 188, 009. 25
4.	Exemption (except for foreign corporations)	3, 000. 00
	Total deduction	$14, 191, 009. 25

SCHEDULE IV.—COMPUTATION OF TAX

Classes of income for computation of tax		Amount of income in each class	Deduction (if in excess of 15 per cent of invested capital, enter only 15 per cent on first line and balance on line or lines below)	Balance subject to tax	Rate	Amount of tax
Over—	But not over—					
1	2	3	4	5	6	7
$0. 00	15% of invested capital	$1, 808, 339. 33	$14, 191, 009. 25	$ 0	20%	$ 0
15% of invested capital	20% of invested capital				25%	
20% of invested capital	25% of invested capital				35%	
25% of invested capital	33% of invested capital				45%	
33% of invested capital					60%	
Total		$	$	$	x x	$

$80,000	15% of invested capital	$1,808,228.23	$14,191,002.25	$ 0	20%	$ 0
15% of invested capital	20% of invested capital				25%	
20% of invested capital	25% of invested capital				35%	
25% of invested capital	33⅓% of invested capital				45%	
33⅓% of invested capital					60%	
Total		$	$	$	x x	$

Copy of above return as amended by Commissioner of Internal Revenue—Changes shown in boldface

SCHEDULE I.—NET INCOME FOR TAXABLE YEAR SUBJECT TO EXCESS PROFITS TAX

1. Net income for taxable year shown in item 8, Form 1030			**$1,781,815.64**
2. Plus interest on obligations of the United States issued since September 24, 1917, held by corporation in excess of $5,000 par value			0
3. Total			**1,781,815.64**
4. Less (a) Dividends received as shown in Item 3d, Form 1030	$	0	
(b) Interest paid (not in excess of legal limit) on indebtedness incurred for purchase of obligations reported in item 2, above		0	0
6. Net income subject to excess profits tax			**$1,781,815.64**

SCHEDULE II.—INVESTED CAPITAL

Item	1911	1912	1913	Taxable year
1. Capital, surplus, and undivided profits at the close of the preceding year as shown by corporation's books before making any adjustments therein (from Schedule A)	**$132,878,349.14**	**$142,139,080.45**	**$151,670,175.75**	**$198,713,925.54**
2. Adjustments by way of additions (from Schedule B)	**2,437,003.25**	**2,449,309.86**	**2,528,401.98**	**2,772,640.96**
3. Total	**$135,315,352.39**	**$144,588,390.31**	**$154,198,577.73**	**$201,486,566.50**
4. Adjustments by way of deductions (from Schedule C)	**125,200,182.11**	**135,600,202.90**	**144,329,346.74**	**186,756,083.06**
5. Invested capital at beginning of year (Item 3 less Item 4)	**$10,115,170.28**	**$8,988,187.41**	**$9,869,230.99**	**$14,730,483.44**
6. Changes in invested capital during year (from Schedules D and E)	**0**	**0**	**0**	**11,439.68**
7. Invested capital for year	**$10,115,170.28**	**$8,988,187.41**	**$9,869,230.99**	**$14,719,043.76**
8. Total invested capital for pre-war period				**$28,972,588.68**

SCHEDULE III.—DEDUCTION

1. Percentage—net income to invested capital for pre-war period (Item 6, Schedule F, divided by Item 8, Schedule II). Carry out result as far as desired, but drop the remainder, if any, without increasing the last figure of the percentage		**9.065%**
2. Percentage to be used in computing deduction (see Instruction 5)		**9 %**
3. Amount of deduction computed at above rate on invested capital for taxable year		**$1,324,713.94**
4. Exemption (except for foreign corporations)		3,000.00
Total deduction		**$1,327,713.94**

SCHEDULE IV.—COMPUTATION OF TAX

Classes of income for computation of tax		Amount of income in each class	Deduction (if in excess of 15 per cent of invested capital, enter only 15 per cent on first line and balance on line or lines below)	Balance subject to tax	Rate	Amount of tax
Over—	But not over—					
1	2	3	4	5	6	7
$0.00	**15% of invested capital**	**$1,781,815.64**	**$1,327,713.94**	**$454,101.70**	**20%**	**$90,820.34**
15% of invested capital	20% of invested capital				25%	
20% of invested capital	25% of invested capital				35%	
25% of invested capital	33⅓% of invested capital				45%	
33⅓% of invested capital					60%	
Total		$	$	$	x x	$

Totals of columns (2), (3), and (4) at end of respective years indicated

1845–1908	33, 569, 857. 14	76, 554, 892. 93	110, 124, 750. 07
1845–1910	39, 979, 811. 50	85, 174, 674. 20	125, 154, 485. 70
1845–1911	45, 591, 484. 45	89, 872, 590. 70	135, 464, 075. 15
1845–1912	49, 610, 074. 71	94, 543, 867. 98	144, 153, 942. 69
1845–1916	70, 302, 157. 10	115, 956, 638. 90	186, 258, 796. 00
1845–1917	78, 638, 717. 11	122, 177, 209. 89	200, 815, 927. 00

21 SCHEDULE I

In the adjustment of plaintiff's net income for 1917 the Commissioner of Internal Revenue increased the deduction on account of depreciation from $25,814.58 to $52,338.27, or by $26,523.69. This reduced plaintiff's net income from $1,808,339.33 to $1,781,815.64, as set forth in item 1 of paragraph 12 of the amended complaint.

The various adjustments made by the Commissioner in the plaintiff's war excess profits tax return, referred to in item 2 (a) of paragraph 12 of the amended complaint, which reduced plaintiff's invested capital for the taxable year by the sum of $1,708,006.69, were as follows:

The company claimed in its original return that its invested capital had increased during the year 1917 by $8,144,916.61 on account of premiums paid by policyholders during 1917 averaged monthly according to plaintiff's understanding of section 207 of the act of October 3, 1917. The Commissioner disallowed this item as invested capital for the year 1917 on the ground that it represented current earnings for the year 1917 which are excluded as invested capital for the year under the statutory definition. Plaintiff's invested capital was thereby reduced by		$8, 144, 916. 61
The Commissioner deducted on account of—		
Depreciation		496, 192. 69
Income taxes withheld at source		1, 094. 37
Pro rata of income tax paid in 1917		11, 439. 68
Making total deductions of		8, 653, 643. 35
The Commissioner increased the capital, surplus and undivided profits at the beginning of the taxable year, as shown by plaintiff's books, by the amount of income taxes withheld at source	$1, 094. 37	
The Commissioner allowed as part of the invested capital the difference between the cost value and the book value of the company's assets, such difference being	2, 772, 640. 96	
The Commissioner did not deduct the amount of State and municipal bonds held at the close of the taxable year on the ground that they were represented in other assets which he deducted. The company's holdings of such bonds were	4. 171, 901. 33	
Making total deductions of	6, 945, 636. 66	6, 945, 636. 66
Leaving a net deduction from plaintiff's invested capital, exclusive of the policy reserve of		1, 708, 006. 69

22 The Commissioner computed plaintiff's invested capital for the pre-war years set forth in item 3 of paragraph 12 of the amended complaint) as follows:

For the pre-war year 1911

The capital, surplus, and undivided profits at the close of the preceding year, as shown by plaintiff's books before making any adjustments therein, were determined by the Commissioner as shown by the annual report of the company to the commissioner of banking and insurance for the State of New Jersey at		$132,878,349.14
The Commissioner added thereto the difference between the cost value and the book value of the company's assets, such difference being		2,437,003.25
Making a total of		135,315,352.39
The Commissioner deducted:		
On account of depreciation	$201,243.41	
On account of policy reserve	124,998,938.70	
Making deductions of	125,200,182.11	125,200,182.11
And leaving invested capital for the pre-war year 1911 at		$10,115,170.28

(23) **For the pre-war year 1912**

The capital, surplus, and undivided profits at the close of the preceding year, as shown by plaintiff's books before making any adjustments therein were determined by the commissioner, as shown by the annual report of the company to the commissioner of banking and insurance for the State of New Jersey, at		$142,139,080.45
The commissioner added thereto the difference between the cost value and the book value of the company's assets, such difference being		2,449,309.86
Making a total of		144,588,390.31
The commissioner deducted:		
On account of depreciation	$246,503.23	
On account of agents' overremittances	15,488.52	
On account of policy reserve	135,338,211.15	
Making total deductions of	135,600,202.90	135,600,202.90
And leaving invested capital for the pre-war year 1912 at		8,988,187.41

(24) **For the pre-war year 1913**

The capital, surplus, and undivided profits at the close of the preceding year, as shown by plaintiff's books before making any adjustments therein, were determined by the commissioner, as shown by the annual report of the company to the commissioner of banking and insurance, for the State of New Jersey, at		151,670,175.75
The commissioner added thereto the difference between the cost value and the book value of the company's assets, such difference being		2,528,401.98
Making a total of		154,198,577.73
The commissioner deducted:		
On account of depreciation	$291,763.05	
On account of policy reserve	144,037,583.69	
Making total deductions of	144,329,346.74	144,329,346.74
And leaving invested capital for the pre-war year 1913 at		9,869,230.99

SCHEDULE J

Comparative statement of income and deductions and net income shown on income tax returns as filed by the Mutual Benefit Life Insurance Company, and as adjusted by Internal Revenue Department

Income	1911	1912	1913	1914	1915	1916	1917	1918	Statements for 1917 and 1918 made on same basis as those of previous years	
									1917	1918
Premiums	$17,983,604.80	$19,412,463.38	$19,409,536.03	$20,468,925.87	$21,647,056.97	$23,002,253.35	$31,788,744.28	$34,380,939.09	$25,736,491.04	$28,088,413.50
Rentals	97,749.44	91,582.98	99,386.92	113,065.85	110,184.68	108,043.52	103,633.39	110,865.64	103,633.39	110,865.64
Interest	6,266,326.36	7,000,733.32	7,544,959.30	7,944,227.50	8,545,911.16	9,177,468.12	9,821,630.74	10,506,314.63	9,821,630.74	10,506,314.63
All other sources	144,693.07	49,214.16	48,104.66	146,044.96	21,860.00	26,142.95	1,179,556.54	1,165,128.70	28,142.50	0
Total gross income	24,492,373.67	26,553,993.84	27,101,986.91	28,672,264.18	30,318,012.13	32,313,907.88	42,893,564.95	46,163,248.06	35,689,897.67	38,705,593.77
Gross income as adjusted by Internal Revenue Department			27,083,962.18	28,586,446.29	30,293,562.04					
Deductions										
Expenses, general	3,263,592.82	3,442,115.23	3,511,118.24	3,523,490.94	3,670,745.19	4,127,136.67	5,006,570.54	4,837,346.89	5,006,570.54	4,837,346.89
Rentals				85,303.08	89,584.01	87,531.44				
Losses—other than policy payments	25,099.92	13,701.53	2,500.00	13,889.19	30,271.80	23,150.34	38,527.30	110,055.10	38,527.30	110,055.10
Depreciation	246,810.78	170,656.25	165,442.39	143,732.08	279,721.72	53,214.56	25,814.58	60,900.05	25,814.58	60,900.05
Payments on policies	10,890,348.85	12,407,980.86	11,886,884.57	13,064,471.12	13,469,219.93	13,845,815.71	20,669,808.48	24,785,566.36	13,466,141.26	17,327,912.07
Net addition to reserve fund	10,309,589.45	8,689,867.54	9,542,078.32	9,734,585.52	10,303,213.47	12,524,976.00	14,557,131.00	15,506,616.00	14,557,131.00	15,506,616.00
Domestic taxes (not including income and excess profits taxes for 1917–1918	538,380.24	587,441.73	569,855.56	567,624.37	620,522.95	702,690.68	787,373.72	810,401.70	787,373.72	810,401.70
Tax exempt interest			203,858.56							
Total deductions	25,273,822.06	25,311,763.14	25,881,737.64	27,133,096.30	28,463,279.37	31,364,515.35	41,085,225.62	46,110,886.10	33,881,558.34	38,653,231.81
Total gross income	24,492,373.67	26,553,993.84	27,101,986.91	28,672,264.18	30,318,012.13	32,313,907.88	42,893,564.95	46,163,248.06	35,689,897.67	38,705,593.77
Total deductions	25,273,822.06	25,311,763.14	25,881,737.64	27,133,096.30	28,463,279.37	31,364,515.35	41,085,225.62	46,110,886.10	33,881,558.34	38,653,231.81
Total net income	0	1,242,230.70	1,220,249.27	1,539,167.88	1,854,732.76	949,392.53	1,808,339.33	52,361.96	1,808,339.33	52,361.96
Net income as adjusted by Internal Revenue Department		1,304,084.68	1,304,950.72	1,538,914.92	1,929,985.21	376,792.51	1,781,815.64		1,781,815.64	

NOTE.—The returns for 1917 and 1918 were on a different basis from those of previous years, as plaintiff was required by the Government in 1917 and 1918 to include in both gross income and deductions certain self-balancing bookkeeping items, amounting in 1917 to $7,293,667.28 and in 1918 to $7,457,654.28. This new rule did not affect the taxable income, as the same items appeared on both sides of the account. The last two columns show what the statements for 1917 and 1918 would have been if compiled on the same basis as the previous years, and that the net income was the same on both bases.

26 *Exhibit No. 1 to amended complaint*

Charter and by-laws of The Mutual Benefit Life Insurance Company of Newark, N. J., State of New Jersey

An act to incorporate "The Mutual Benefit Life Insurance Company."

SECTION 1. Be it enacted by the Senate and General Assembly of the State of New Jersey, as follows:

That Thomas V. Johnson, William M. Simpson, Jesse Baldwin, James L. Dickerson, Henry McFarland, Thomas B. Segur, Charles S. Macknet, Guy M. Hinchman, Samuel Meeker, Robert L. Patterson, Marcus L. Ward, Lewis C. Grover, and others, their associates, successors and assigns, shall be, and are hereby ordained, constituted and declared to be a body politic and corporate in fact and in name by the name of "The Mutual Benefit Life Insurance Company," to be located at Newark in this State; and by that name they and their successors shall and may have succession during the continuance of this act, and shall be capable of suing and being sued, pleading and being impleaded, answering and being answered unto, defending and being defended, in all manner of actions, suits, complaints, matters and causes whatever; and that they and their successors may have a common seal, and may alter and change the same at pleasure; and, also, that they and their successors, by the name of "The Mutual Benefit Life Insurance Company," shall be in law capable of purchasing, holding, and conveying any estate, real or personal, for the use of the said corporation: Provided, The lands, tenements and hereditaments, which it shall be lawful for the said corporation to hold, be only such as shall be requisite for the purpose of erect-
27 ing buildings thereon, in which to meet and transact the business of the corporation, or such as shall have been bona fide mortgaged to it by way of security, or conveyed to it in satisfaction of debts, previously contracted in the course of its business, or purchased at sales on judgments or decrees, which shall have been obtained for such debts; and with regard to all such lands, tenements, and hereditaments, so to be held by the said corporation as aforesaid, except such as may be for its immediate accommodation as aforesaid, or such as it may hold by way of mortgage, and whereof the actual possession shall be and remain in the mortgagors, their heirs and assigns, the corporation shall be bound to sell and dispose of, respectively, within five years after it shall acquire the same, and shall not be capable of holding the same after the expiration of five years.

SEC. 2. And be it enacted, That all persons who shall at any time hereafter insure in or with the said association, shall, while they continue so insured, be deemed and taken as members of the said corporation; and that the property and concerns of the said corporation shall be conducted and managed by twelve directors, a majority of whom shall be citizens and residents of this State, and none of

whom shall hold the like office or agency in any other insurance company in this State, to be chosen, by ballot, by and from among the members, and shall hold their office for one year and until others are chosen; and the said directors and officers may always be re-elected, but one one-fourth part or number of the directors must be reelected every year, for which purpose, at their first meeting, they must divide themselves in four sets or classes, of three each; they term of the first class shall expire at the end of one year, the term of the second class shall expire at the end of two years, the term of the third class shall expire at the end of three years, the term of the fourth class shall expire at the end of four years, and so on
28 successively; the seats of these classes shall be supplied by the members of this corporation; and that the election for directors shall be held on the third Monday of January, in every year, at the office of the company, or such other place as a majority of the directors may previously designate, public notice of which shall be given by the secretary, in one or more newspapers printed or circulating in the county of Essex, at least two weeks previous to the time of holding such election; and if any of the said directors shall die, refuse to serve, or neglect to act in their said office for the space of two months, then and in every such case the remaining directors shall have power to fill such vacancy or vacancies until the next annual election; and in case it should happen that an election for directors should not be held on the day when pursuant to this act it ought to be held, the said corporation shall not be dissolved for that cause, but it shall and may be lawful to hold an election for directors pursuant to law; and until an election for directors shall be held according to the provisions of this act, the persons named in the first section of this act shall have the direction and management of the said corporation.

SEC. 3. And be it enacted, That it shall and may be lawful for the said corporation to insure their respective lives, and to make all and every insurance appertaining to or connected with life risks of whatever kind or nature, as well of the sound in health, as the infirm or invalid.

SEC. 4. And be it enacted, That it shall be lawful for any married woman, by herself and in her name, or in the name of any third person, with his assent, as her trustee, to cause to be insured for her sole use, the life of her husband for any definite period or for the term of his natural life; and in case of her surviving her husband the sum or net amount of the insurance becoming due and payable by
29 the terms of the insurance, shall be payable to her, to and for her own use free from the claims of the representatives of her husband, or of any of his creditors; but such exemption shall not apply when the amount of premium annually paid shall exceed three hundred dollars.

SEC. 5. And be it enacted, That in case of the death of the wife, before the decease of the husband, the amount of the insurance may

be made payable after death to her children for their use, and to their guardian, if under age.

SEC. 6. And be it enacted, That it shall and may be lawful for the officers of said corporation to take the notes or obligations of the members for the amount, either in part or the whole of the premium of insurance, in proportion to the amount insured.

SEC. 7. And be it enacted, That the directors for the time being, or a majority of them, shall have power to make and prescribe such by-laws, rules, and regulations, as to them shall appear needful and proper, for the management and disposition of the stock, property, estate and effects of the said corporation, and for all such matters as appertain to the business thereof; and shall have power to appoint an actuary, from among themselves, and such other additional officers, clerks, and servants, for carrying on the business of said corporation, as they may select, with such allowances as to them shall appear just and satisfactory: Provided, That such by-laws, rules, and regulations, shall not be repugnant to the Constitution or laws of the United States or of this State.

SEC. 8. And be it enacted, That at the first meeting of the directors held after the organization of this company, and at every annual meeting of the members in each year after, the directors shall choose, from among themselves one person for president, who shall continue in office until the next annual meeting, and until another shall be appointed in his place.

SEC. 9. And be it enacted, That all policies of insurance which shall be made by the said corporation, in pursuance of this act, shall be made on such terms and conditions, and for such periods of time, and confined to such persons, as shall be from time to time ordered and prescribed by the by-laws, rules and regulations of said corporation: and, if at any time it shall so happen that there shall be just claims on the corporation for losses sustained, to a greater amount than they have funds on hand to discharge, in such cases the directors for the time being shall with all convenient expedition proceed to assess such deficiency, in a ratable proportion, on the members of the association, or their lawful representatives, according to the amount of each member's insurance: Provided, That such assessment shall not exceed the amount of the note or obligation given by each member: which rates or assessment shall be approved of by a majority of the directors, and notice in writing shall be given to each member, or his lawful representative, of the assessment and amount by him, her, or them, required to be paid; and each and every member, or his lawful representative, so notified, shall pay the same to the treasurer for the time being within sixty days after such notification and in default thereof shall forfeit all right and claim to any policy that he may have obtained, and be no longer a member of the association: and shall also be liable for the amount of such assessment, with interest, to be recovered by action of debt, with costs of suit, before any court of competent jurisdiction.

SEC. 10. And be it enacted, That three or more of the directors shall have power to call a meeting of the directors, by giving
31 notice in one or more newspapers published or circulating in the County of Essex, at least ten days before said meeting.

SEC. 11. And be it enacted, That no part of the funds of said corporation shall be used for banking purposes.

SEC. 12. And be it enacted, That it shall be lawful for the legislature at any time hereafter, to alter, amend, modify, or repeal this act, and that this act shall continue in operation twenty years and no longer. Approved January 31st, 1845.

CHARLES C. STRATTON.

32 STATE OF NEW JERSEY.

A supplement to the act, entitled, "An act to incorporate the Mutual Benefit Life Insurance Company," passed January thirtieth, eighteen hundred and forty-five.

1. Be it enacted, by the Senate and General Assembly of the State of New Jersey, That the twelfth section of the act, to which this is a supplement, be and the same is hereby repealed.

2. Be it enacted, That it shall be lawful for the legislature, at any time hereafter, to alter, amend, modify, or repeal the act to which this is a supplement.

3. And be it enacted, That this act shall take effect immediately. Approved January 27, 1848.

DANL. HAINES,
Gov.

33 I, S. D. Dickinson, secretary of state of the State of New Jersey, do hereby certify, that the foregoing is a true copy of an act passed by the legislature of said State, and approved by the governor, January 31, 1845, and of a supplement thereto approved January 27, 1848, as taken from and compared with the
[SEAL] originals on file in my office. In testimony whereof, I have hereunto set my hand and affixed my seal of office, at Trenton, this twenty-third day of May, A. D. 1905.

S. D. DICKINSON,
Secretary of State.

34

By-laws

(Revised September, 1916)

Annual election and meeting

SECTION 1. The annual meeting of the company for the election of directors and the transaction of business shall be held at the office of the company, in Newark, N. J., on the third Monday of January, in every year, of which public notice shall be given by the secretary, for two weeks, by advertising in a newspaper published in Newark.

SEC. 2. Two members of the company shall be appointed by the board of directors as inspectors whose duty it shall be honestly and

fairly to conduct such election; and who shall furnish a certificate over their signatures of the result, to be filed and recorded by the secretary of the company. The poll shall be opened at 11 o'clock a. m., and be closed at 1 o'clock p. m.

SEC. 3. At the annual election for directors, each member of the company shall be entitled to one vote when the insurance is for a sum not exceeding $2,000; over $2,000 and up to $5,000, to two votes; over $5,000, to three votes.

Election and appointment of officers

SEC. 4. The first meeting of the directors after the annual meeting of the company shall be held at one o'clock p. m., on the day of such annual meeting, when they shall elect a president from among themselves by ballot. They may also elect two vice presidents, a treasurer, secretary, and such other officers as may have been designated by the board, who shall continue in office until the next annual meeting or until others are appointed in their places, and who shall be subject to removal at the pleasure of a majority of the board of directors.

35 Meetings

SEC. 5. The directors shall hold regular meetings on Wednesday of each week. Special meetings may be called by the president, or in his absence by a vice president, two days' written notice being given to each member of the board. Three members of the board may call a special meeting, by giving two days' written notice of such meeting to each member of the board. Five directors shall constitute a quorum for the transaction of business, but a less number may adjourn from time to time.

SEC. 6. In the meetings of the board the order of business shall be:

1. Reading of minutes of last meeting;
2. Reports of special committees;
3. Unfinished business;
4. Miscellaneous business;

unless otherwise ordered by the board.

Checks

SEC. 7. No check shall be drawn, except for salaries and current expenses, or in pursuance of a contract, without the authority of the board. All checks shall be drawn to the order of the party to whom the payment is due, and be signed by the president, the vice presidents, the treasurer, and the comptroller, or any two of them. The assistant treasurer may sign in place of the treasurer.

Duties of the president

SEC. 8. The president, acting under the advice and direction of the board, shall have the general superintendence of the business

of the company. He shall preside at all meetings of the board. He shall sign all such papers, contracts and agreements as shall be authorized by the board. He shall have exclusive charge
36 of the corporate seal of the company, and shall have power to affix the same to all contracts, to certificates acknowledging satisfaction of mortgages, to releases of mortgaged premises when authorized by the board, to powers of attorney for the transfer of stocks, bonds, etc., to pleadings in actions at law, and to the appointments of attorneys for other States when required by the laws thereof. All reports required from the other officers shall be made to him. He shall, at meetings of the board, lay before it all information connected with the interests and business of the company, and, from time to time, make such suggestions and recommendations as he may deem necessary. An annual report shall be prepared and presented by him to the directors.

Duties of vice presidents

SEC. 9. It shall be the duty of the vice presidents to assist the president in all duties that he may assign to them, and in case of the disability or absence of the president to perform the duties required of the president. They shall also perform such other duties as may from time to time be assigned them by the board. They may in the absence of the secretary, treasurer or comptroller, sign in their place.

Duties of the secretary

SEC. 10. The secretary shall countersign all policies and other documents requiring his signature, and shall make such attestations of the correctness of the company's records as may be required. He shall receive all communications to the company, and conduct the general correspondence. His duties may be changed from time to time by resolution of the board or direction of the president. In his absence his duties shall be performed by a vice president or an assistant secretary.

Duties of the treasurer

SEC. 11. The treasurer shall have charge of all moneys, cer-
37 tificates of stock, bonds, premium notes, bonds and mortgages, and other evidences of debt belonging to the company. He shall deposit the cash funds of the company in such bank or banks as the board shall direct, to the credit of the company. He shall collect all coupons, the interest on bonds, on bonds and mortgages, and also on investments of every character held by the company. No moneys shall be paid by him except for salaries and current expenses, or in pursuance of a contract, without the authority of the board. He shall make no advances on account of mortgage loan, unless satisfied that they will be secured by first

liens on real estate, the title to which has been approved by the counsel or associate counsel of the company. He shall keep a cash book which shall show all cash transactions, and other books in which shall be properly recorded the assets of the company which are in his custody; and he shall perform such other duties as shall be required of him by the board or by the president.

Mathematician and actuary

Sec. 12. The board shall annually appoint a mathematician whose duty it shall be to make all necessary computations relating to premium rates, dividends, reserves and surrender values, upon principles recognized and approved by the board. He shall from time to time make a full analysis of the company's mortuary experience, and shall present the results in such a form as may seem best adapted to throw light upon the death rate amongst insured lives. He shall, at the close of each year, prepare a report to the board, showing in detail the company's assets, liabilities and surplus, and shall preserve such a uniform record as shall truly exhibit the growth and condition of the company from year to year. He shall collect useful data, books, documents, tables and official records relating to the business of life insurance, and perform such other duties as may be imposed upon him by the board or by the President.

38 There shall also be an actuary chosen by the board, who shall assist the mathematician in the conduct of the mathematical department.

Superintendent of agencies

Sec. 13. There shall be chosen annually a superintendent of agencies, who shall be charged with the supervision of the company's insurance agents to the end that they may efficiently and faithfully perform their duties. He shall, by correspondence and personal interviews, give them such information, encouragement and advice as he shall be able and think expedient for their work and the promotion of the company's interest, and he shall perform such other duties as may be required by the board or by the president.

Comptroller

Sec. 14. There shall be a comptroller of the company, who shall be appointed by and hold office during the pleasure of the board. It shall be his duty to see that all cash paid and all checks drawn against the company shall be correct and in accordance with the claims against the company, and he shall perform such other duties as may be imposed upon him by the board or by the president.

Auditor

Sec. 15. The board shall annually appoint an auditor whose duty it shall be to cause monthly and quarterly statements of the com-

pany's receipts and disbursements and also its assets to be prepared, and to report the same duly certified to the directors. And he shall each month examine the company's cash book and agency reports and shall see that there are proper vouchers for all expenditures charged therein, and shall report thereon to the president and to the finance committee; and he shall perform such other duties as may be assigned him by the board or by the president.

39

Counsel of the company

SEC. 16. It shall be the duty of the counsel of the company to afford and communicate to the officers and directors, in writing or otherwise, whenever needed, such counsel, legal advice, and information as may be requisite to guide them respectively in a safe and correct discharge of their duties. He shall have general charge of all suits brought by or against the company. And he shall guard the company, by his advice and counsel, against the allowance of any illegal or unjust claims against it; and shall perform such other duties as shall be required of him by the board or by the president.

Associate counsel of the company

SEC. 17. The associate counsel shall examine and decide on the validity of all titles to real estate offered as security for loans made by, or for the forbearance of money due to the company; and if title be approved shall report the results of his examination and his decisions to the treasurer such reports to be accompanied by full and satisfactory abstracts of title, and also by notes, bonds and mortgages, or trust deeds, in proper legal form, and duly executed with such collateral security as may be required; and all mortgages and trust deeds shall be shown by the abstracts to be first liens and incumbrances of record upon the property pledged as security for loans. Whenever required, he shall examine the records for unpaid taxes and assessments on property mortgaged to the company. He shall attend to the foreclosure of all mortgages ordered to be foreclosed, and to the collection of all moneys in connection therewith. He shall examine and report as to the sufficiency of the searches and the correctness of the title in each case of release of part of the security covered by any mortgage held by the company, when such release has been approved by the board. He shall attend to
40 the drawing of indemnity bonds, examining and advising as to assignments of policies and policy claims, supplementary policy agreements, change of beneficiaries, and any legal matters regarding loans and surrender values. He shall take such charge of all suits brought by or against the company as the counsel of the company shall from time to time direct, and shall perform such other duties as shall be required of him by the counsel or by the company.

Agents

SEC. 18. Agents shall be appointed and removed by the president, who shall make such reasonable contracts for their services as he may deem advisable. Agents shall comply with the rules and regulations of the company. In every case where an agent shall fail to so comply, the president shall take immediate action thereon, and withdraw such agency unless good cause is shown to the contrary.

Medical board

SEC. 19. There shall be appointed annually by the directors a medical board, to consist of two or more members, to whom applications for insurance shall be submitted for their examination and advice. They shall adopt under the direction of the president, as far as possible, written rules for their government in advising upon the applications that may be submitted to them. They shall keep such record of their proceedings and business as shall be available for reference or information on the part of officers and directors. They shall nominate and remove examiners, subject to the approval of the president. They shall make a mortuary report at the end of each year, of the losses of the company, classifying the diseases of which the insured died. They shall inform themselves, as far as practicable, of all matters pertaining to vital statistics in this and other countries; and shall recommend, whenever they may
41 deem it necessary, such changes in reference to medical examinations or any other matter connected with their department, as may be suggested by their combined experience and information. No policy shall be written on an application not advised by the medical board without the joint concurrence of at least three of the officers of the company. A member of the medical board shall pass upon all losses so far as the medical proofs are concerned, and, when not satisfactory, state in writing what is required.

Finance committee

SEC. 20. A finance committee consisting of the president and four or more other directors shall be chosen by the board of directors annually, and this committee shall have such meetings as may be necessary. They shall consider the finances of the company and examine and report to the board of directors for its approval such investments as they may consider worthy of the consideration of the board. The finance committee shall examine the auditor's monthly reports, and perform such other duties as the board of directors may from time to time by resolution assign to it. The finance committee shall in addition to its regular meetings meet at any time on the call of the president, when he desires to consult with it upon any question relating to the business of the company.

Miscellaneous

SEC. 21. During the months of January and July, in each and every year, the assets of the company shall be examined by a special committee, whose report shall be placed on the minutes.

SEC. 22. The annual statement of the business and affairs of the company shall be prepared by the officers and presented by the president to the directors at their meeting in January.

42 SEC. 23. No officer or director shall receive any compensation for procuring any loan from the company; nor shall any director vote on any loan in which he is personally interested.

SEC. 24. No risk shall be taken on a single life for more than $100,000 at ages 55 and under; $90,000 at age 56; $80,000 at age 57; $70,000 at age 58; $60,000 at age 59; and $50,000 at ages 60 and over. If the applicant be a woman, the amount shall not exceed $5,000; but the officers in their discretion may specially authorize writing insurance up to $25,000 on the life of a woman. Any larger amount on the life of a woman shall require a special authorization by the board.

SEC. 25. The surplus of the company may be distributed from time to time as the board may direct.

SEC. 26. Claims for insurance shall only be paid after satisfactory proof shall have been presented, examined and approved, of the maturing of the contract of insurance by the death of the insured, or by the expiration of the endowment period, and after due observance of the contract by the insured. Such claims shall then be reported to the board.

Alteration of by-laws

SEC. 27. These by-laws may be altered or amended at any meeting by a vote of three-fourths of the directors, and not otherwise, unless thirty days' notice shall have been given to the board in writing, with a distinct statement of what is proposed; and in such cases it shall be the duty of the secretary to give written notice of the proposed alteration, to each member of the board, at least five days previous to the meeting at which it is to be acted upon; and no alteration shall be made unless approved by seven or more members of the board, to be ascertained by yeas and nays.

43 In United States District Court

District of New Jersey

[Title omitted.]

Motion to strike out complaint

Filed November 22, 1920

The defendant, Charles V. Duffy, collector, appearing herein by Elmer H. Geran, United States attorney for the district of New

Jersey, moves to strike out the complaint of the plaintiff because the same is not sufficient in law for the following reason:

That the policy reserve maintained by an insurance company is not a part of its invested capital for the purpose of computing its excess-profits tax.

ELMER H. GERAN,
United States Attorney.

44 In United States District Court

District of New Jersey

[Title omitted.]

Opinion

RELLSTAB, District Judge:

The plaintiff, a New Jersey corporation, sues to recover from the defendant, collector of internal revenue for the fifth district of New Jersey, $83,779.70, war excess-profits tax, imposed upon it for the year 1917, which it paid under protest. It has complied with the necessary prerequisites for the instituting of the present suit.

45 The tax was imposed under the revenue act of October 3, 1917. The defendant moves to strike the complaint. It has been so framed (several times amended) as to present all the facts necessary to a final determination, and by stipulation the decision on this motion is to be a final disposition of the controversy in this court.

The plaintiff is a mutual company, having no capital stock or stockholders, and never carried on any business other than that of mutual life insurance. The plaintiff's policyholders are its members, and they elect from among themselves the directors who manage its business. This business is conducted upon the "level premium plan," under which the maximum annual contribution paid by the policyholder in premiums is uniform throughout the life of the policy. In determining the "level premium" there is added to the mathematical computation of the cost of insurance an amount to provide for salaries, taxes, and other expenses of conducting the business and to take care of unforeseen contingencies, which addition is called "loading."

The plaintiff's assets consist solely of these premiums, the investment thereof, and the income derived from these investments. Inasmuch as the stipulated uniform premiums are in excess of the cost of insurance during the earlier years of the policy and not sufficient to pay the cost of the insurance during its later years, a portion of this excess is by law required to be set aside and held as a reserve or guarantee fund (called the legal reserve) to maintain the insurance during the later years. At the end of each year the excess of income over disbursements is ascertained, and after supplying so much thereof as is required for the increase of its legal reserve

and an additional sum to care for unanticipated losses, expenses, and shrinkage of earnings—an additional safeguard of the stability and continuity of the legal reserve—the balance is returned to the policyholders as a dividends or credit upon their net annual premiums.

46 A detailed statement of this method of conducting mutual life insurance on the "level premium plan" and the nature and application of the excess payments of premiums is set out in Mutual Benefit Life Insur. Co. (the plaintiff herein) *v.* Herold (N. J.), 198 F. 199, 202–4, and Connecticut General Life Ins. Co. *v.* Eaton (Conn.), 218 F. 188.

The laws of the States in which the plaintiff carries on its business require that its assets shall not be less than this legal reserve. The amount of the latter as fixed by the commissioner of banking and insurance of the State of New Jersey on January 1, 1917, was $186,258,796. In the plaintiff's management of its assets there is no segregation or special allocation of any part thereof and the legal reserve is not separately held or invested.

Under the provisions of Title I of the revenue act of September 8, 1916, as amended by Title I of the act of October 3, 1917, the plaintiff filed an income tax return for the year 1917 showing a net income of $1,808,339.33 and paid a tax of $108,500.36. In this return was included all the interest obtained from its securities and investments not specifically exempt from tax. Under the provisions of Title II of the last-mentioned act the plaintiff also filed an excess-profits tax return for the year 1917, showing on its basis of computation that no such tax was due. In this return it declared its invested capital to be $202,685,846.45, which included its legal reserve of $186,258,796. Thereafter, on June 10, 1920, the Commissioner of Internal Revenue (hereinafter referred to as the commissioner) amended the excess-profits tax return, deducting this reserve from the invested capital, allowing only $14,719,043.76 as such capital, and imposing the excess-profits tax sought to be recovered in this suit. This deduction, or nonallowance, is the basis of the plaintiff's suit.

47 The Government contends that the legal reserve of a mutual insurance company can not be its invested capital, because it does not belong to it, but to the policyholders; that such fund is in the nature of a trust fund, and is in fact a liability and not an asset. For some purposes this reserve is a liability or a trust fund, but so is the capital subscribed by shareholders in a stock corporation. Both are treated as a liability in balancing assets and liabilities. In the case of an insolvent stock corporation, its assets are charged with a trust in favor of creditors. On the dissolution or liquidation of a stock corporation, the capital remaining after the payment of debts belongs to the shareholders. So on the dissolution of a mutual insurance company, the holders of unmatured policies, after the payment of matured policies, share pro rata the

assets of the company, including the legal reserve. Mayer *v.* Attorney General, 32 N. J. E. 815, 822. If the legal reserve of a mutual life insurance company is a liability or trust fund in favor of the policyholders, as the Government contends, so are the other assets of the company. The difference between them is merely that the former is required by law to be maintained intact as a guarantee for the payment of such policies, and can not lawfully be diverted to other uses. Under certain tax laws the legal reserves of insurance companies are treated as liabilities. Whether they are to be so considered depends upon the particular kind of tax imposed and the legislative policy adopted in regard thereto.

In the instant case the character of the plaintiff's assets is involved, and the specific question is whether its reserve, or at least $25,500,000 thereof, is invested capital within the meaning of Title II—"War excess profits tax" of the revenue act of October 3, 1917.

The pertinent parts of this title follow:

"Sec. 200. That when used in this title—

48 "The term 'corporation' includes joint stock companies or associations and insurance companies.

* * * * * * *

"The term 'pre-war period' means the calendar years nineteen hundred and eleven, nineteen hundred and twelve, and nineteen hundred and thirteen * * *."

"Sec. 201. That in addition to the taxes under existing law and under this act there shall be levied, assessed, collected, and paid for each taxable year upon the income of every corporation, partnership, or individual a tax (hereinafter in this title referred to as the tax) equal to the following percentages of the net income:

"Twenty per centum of the amount of the net income in excess of the deduction (determined as hereinafter provided) and not in excess of fifteen per centum of the invested capital for the taxable year."

"Sec. 203. That for the purposes of this title the deduction shall be as follows, except as otherwise in this title provided—

"(a) In the case of a domestic corporation, the sum of (1) an amount equal to the same percentage of the invested capital for the taxable year which the average amount of the annual net income of the trade or business during the pre-war period was of the invested capital for the pre-war period (but not less than seven or more than nine per centum of the invested capital for the taxable year), and (2) $3,000, * * *."

"Sec. 206. That for the purposes of this title the net income of a corporation shall be ascertained and returned * * * (c) for the taxable year upon the same basis and in the same manner as

49 provided in Title I of the act entitled 'An act to increase the revenue, and for other purposes,' approved September eighth, nineteen hundred and sixteen, as amended by this act. * * *"

"Sec. 207. That as used in this title, the term 'invested capital' for any year means the average invested capital for the year, as defined and limited in this title, averaged monthly.

"As used in this title, 'invested capital' does not include stocks, bonds (other than obligations of the United States), or other assets, the income from which is not subject to the tax imposed by this title nor money or other property borrowed, and means, subject to the above limitations:

"(a) In the case of a corporation or partnership: (1) Actual cash paid in; (2) the actual cash value of tangible property paid in, other than cash, for stock or shares in such corporation or partnership at the time of such payment; * * * and (3) paid in or earned surplus and undivided profits used or employed in the business, exclusive of undivided profits, earned during the taxable year; * * *."

The pertinent parts of the act of 1916 referred to follow:

"TITLE I—INCOME TAX

"Part II—On corporations

"Sec. 10. That there shall be levied, assessed, collected, and paid annually upon the total net income received in the preceding calendar year from all sources by every corporation, joint-stock company or association, or insurance company, organized in the United States, no matter how created or organized, but not including partnerships, a tax of two per centum upon such income; * * *.

"Deductions

50 "Sec. 12 (a). In the case of a corporation, joint-stock company or association, or insurance company, organized in the United States, such net income shall be ascertained by deducting from the gross amount of its income received within the year from all sources—

"First. All the ordinary and necessary expenses paid within the year * * *.

"Second. All losses actually sustained and charged off within the year and not compensated by insurance or otherwise, including a reasonable allowance for the exhaustion, wear and tear of property arising out of its use or employment in the business or trade; * * * (c) in the case of insurance companies, the net addition, if any, required by law to be made within the year to reserve funds and the sums other than dividends paid within the year on policy and annuity contracts; * * *.

"Third. The amount of interest paid within the year on its indebtedness. * * *

"Fourth. Taxes paid within the year * * *."

Section 4 of Title I, war income tax, of the act of October 3, 1917, so far as pertinent, provides:

"Sec. 4. That in addition to the tax imposed by subdivision (a) of section ten of such act of September eighth, nineteen hundred and

sixteen, as amended by this act, there shall be levied, assessed, collected, and paid a like tax of four per centum upon the income received in the calendar year nineteen hundred and seventeen, and every calendar year thereafter, by every corporation, joint-stock company or association, or insurance company subject to the tax imposed by that subdivision of that section, * * *.

"The tax imposed by this section shall be computed, levied, assessed, collected, and paid upon the same incomes and in the same manner as the tax imposed by subdivision (a) of section ten
51 of such act of September eighth, nineteen hundred and sixteen, as amended by this act. * * *"

It is noted that section 207 above, in its definitions, is both exclusive and inclusive.

The Government contends that all the legal reserve in question is excluded by this section, because, first, it is within its nonincluding paragraph, and second, because it is not within its including paragraph. The restrictive words of Title II, "War excess-profits tax," suggest a doubt that it could have been the legislative purpose to include mutual life insurance companies in the operation of the tax provisions of this title. These companies are not in business for gain, in the ordinary commercial sense. Their purpose is by cooperation to secure life insurance at cost. Excessive gains or profits are foreign to their purpose at any time, and war conditions are singularly likely to increase their losses without affording them any additional opportunity to increase their net gains. Experience has proven that a state of war increases the burdens of life insurance companies greatly in excess of those imposed on other kinds of business.

In the revenue act of March 3, 1917, an additional tax on the income of corporations, under the head "Excess-profits tax," was authorized. This country's entrance into the World War, following shortly thereafter, necessitated a larger revenue than contemplated when that act was passed. The bill which culminated in the act of October 3, 1917, repealed all the sections composing Title II, "Excess-profits tax," of the act of March 3, 1917, and as passed by the House did not contain the word "war" in the title dealing with excess profits. This word, used as indicating a reason for increased revenue, appears for the first time in the revenue act of
52 October 3, 1917, and was the result of amendments reported to the Senate by its Finance Committee, which, in support of the amended bill, said:

"It is estimated that the House bill will raise from excess-profits taxes an additional amount of $200,000,000, while it is estimated that the bill as amended by your committee will raise from war-profits taxes an additional amount of $562,000,000.

"After mature consideration your committee reached the conclusion that, in view of the large amount to be raised and the enormous war profits, amounting to nearly $3,000,000,000, shown by the income-tax returns of corporations for 1916, which amount will un-

doubtedly be increased for the year 1917, due in the main to war and war conditions, $562,000,000 was not an unreasonable *additional* amount to ask from the industries whose earnings have been so greatly augmented by the conditions which made necessary the call for this additional revenue.

* * * * * * *

"Your committee accordingly proposes the repeal of the existing war-profits tax law, and the substitution for both it and the additional war-profits tax passed by the House of a tax upon a basis similar to that followed by the European countries in which such taxation has been carried out with marked success. The committee proposes, instead of an excess-profits tax, a war-profits tax. In general, it proposes to make the basis of the tax the difference between the profits of the pre-war period and the profits of the taxable year. We take by taxation, directly or indirectly, for the purposes of war, a part of the extra gains which war itself has caused."

Here is an unequivocally expressed declaration that the extra
53 gains made out of conditions produced by the war should bear the extra governmental expenses incident to it, and that the standard for comparison should be the profits of the pre-war period, which the act (sec. 200), as noted, defined as the calendar years 1911, 1912, and 1913. This declaration by the Senate Committee, as the reason for imposing a war excess profits tax, tends to show that Congress, when it dealt with the "war excess profits tax" provisions of the act of October 3, 1917, did not have in mind enterprises of the character of mutual life insurance companies whose business it is to provide its members with insurance at cost, and which could not make extra gains as a result of war conditions, but, on the contrary, by reason thereof, were bound to suffer increased losses on account of war casualties and epidemics of diseases which usually follow in war's wake, as well as increased expenses in conducting their business.

An examination of the returns made by the plaintiff for the years 1911 to 1917, inclusive, for Federal income tax purposes, discloses that while both its gross income and expenditures steadily increased, the increases were quite conservative, the average increase from 1913 being less than 7%. The return for 1918, on the contrary, shows that while the gross income increased at about the same rate, the increase in expenses and losses over 1917 exceeded 12%. While the end of military operations in 1918 necessarily limited the scope of the comparison for this purpose, yet even this short period confirms the concept that a life insurance company is more likely to lose than gain during a war period; more likely to have excessive losses than excessive profits.

None of the plaintiff's assets during 1917 yielded a greater income than 6 per centum per annum, and the average rate of interest or return on its invested assets for many years was less than that percentage.

Mutual insurance companies are not in business or trade in
54 the ordinary acceptation of these terms. They are distributors, not producers, of wealth. Their business is, as stated, to insure its members at cost. In this business some gains are planned and expected, but only to reduce the cost of insurance. To this end the premiums—the only primary source of revenue—are purposely made larger than the calculated bare cost of insurance. This excess is invested and the income thereof compounded. Whatever the gains, they are distributed not as dividends in the ordinary sense, but to reduce the cost of insurance to the members. Gains of that kind, even if they exceed anticipation, are not of the character sought by the tax acts under consideration. True, it is possible that for a given year, by reason of increased income—premiums and interest—on the one hand, and unlooked-for decreases in losses and expenses on the other hand, the net income may be larger. However, the income, whatever its source and whatever its size, is subject to Federal income taxes. Under the ruling of the Commissioner, presently to be more particularly referred to, such parts of this income as exceed debts, liabilities, and payments to legal reserve, became invested capital within the meaning of the excess profits tax provisions of the act of October 3, 1917.

Under other titles of this act the rate of the ordinary income tax was considerably increased, but under Title II Congress reached out for and taxed only such income as represented excessive profits. In that title (sec. 203), as noted, it decided that a profit of between 7% and 9% on invested capital was not excessive. In construing the sections under Title II regard must be had to this legislative purpose and decision. So regarded, it is manifest that the excess profits tax was sought only from those who, notwithstanding the payment of the increased ordinary income tax, would still be possessed of excessive profits.

Under this revenue act, the basis, or starting point, for de-
55 termining whether an excess profits tax should be paid, is the net income subject to the ordinary tax under Title I, Part II, of the act of September 8, 1916. The plaintiff in its tax return for the year 1917 reported its total gross income at $42,893,564.95, made up as follows:

"3 (a) From premiums	$31,788,744.28
(b) Income from rentals	103,633.39
(c) Income from interest	9,821,630.74
(d) Income from dividends	0.
(e) Income from all other sources	1,179,556.54
Total gross income	43,893,564.95"

Among the deductions authorized by that act in ascertaining the net taxable income in the case of insurance companies, and the only one that needs special mention, is "the net addition, if any, required by law to be made within the year to reserve funds." (Sec. 12 (a), second (c).) In the return in question this amounted to the sum of

$14,557,131. The Government does not dispute the correctness of this amount of net addition, nor any of the items constituting the gross income thus reported. From this return it is noted that of the total gross income for 1917, $31,788,744.28 is from premiums and $9,821,-630.74 and $103,633.39 is from interest and rents, respectively.

In amending the plaintiff's excess profits tax return the commissioner, applying sec. 203 (a), above, allowed only $9,657,529.56 as its average invested capital for the pre-war period, and calculated its average taxable income for such period at $869,678.46, or 9.005%. In computing this average he refused to allow any of the legal reserve as part of the invested capital for the pre-war period, and in fixing such capital for the year 1917 he, of course, adhered to the same ruling, with the result that, as before stated, the invested capital for that year, as computed by him, was reduced from $202,-
56 685,846.45 to the sum of $14,719,043.76. This sum is less than $5,000,000 more than the total income received from the actual invested assets of the company for that year; such income equalling 67.42% of the amount allowed as invested capital. As noted, so much of this reserve as was not interest from invested assets was obtained from the members of the corporation—policyholders—in the shape of premiums. These premiums were deliberately made larger to permit of a part being applied to the legal reserve. By such contribution the palintiff's only capital fund was created and maintained. Without such redundancy of premiums the plaintiff could not have either complied with the statute requiring such reserve, or produced the nearly $10,000,000 interest which swelled the income on which it paid a Federal income tax.

To pay the income derived largely from an invested fund and deny that the fund is invested capital is neither logical nor consistent, and such a result should not be allowed, unless the statutory definition permits of no other course. This the Government does not dispute. It insists, however, that the statutory definition requires such exclusion. In its exclusive provision, as already noted, it is declared that, as used in this title, invested capital does not include—"stocks, bonds (other than obligations of the United States), or other assets, the income from which is not subject to the tax imposed by this title nor money or other property borrowed. * * *"

Concerning this feature of the definition, the Government contends that, as the net additions to reserve fund were deducted in ascertaining the net income subject to normal tax, it can not be treated as invested capital, for the reason that these additions are "other assets, the income from which is not subject to the tax imposed by this title."

On the other hand, the plaintiff insists that "the character of
57 the asset and not the use to which the income derived therefrom is put determines whether the asset shall be excluded from 'invested capital' and, furthermore, that the income from the reserve does not escape taxation."

At the outset, in considering this contention of the Government, it should be observed that the net additions made in 1917 are not part of the legal reserve which the plaintiff seeks to have allowed as invested capital. This reserve is made up solely of net additions of preceding years. Plaintiff has been doing business since 1845, and created and maintained a policy reserve for more than a quarter of a century before the New Jersey statute (P. L. 1872, pp. 8, 30) required it. During its earlier years, with few exceptions, the plaintiff's premiums furnished the larger contribution to this reserve, while during its later years the interest contributions to this fund exceeded those derived from premiums.

The income obtained from the investment of this legal reserve furnished nearly 80% of the income other than that obtained from premiums, and was so reported in item 3c of its return for normal Federal tax purposes, and no deduction thereof, as such, was claimed or allowed. The fact that the "net additions to reserve fund" made in the year 1917 were deducted in determining the net income of plaintiff subject to the normal tax of that year does not support the Government's contention that this legal reserve is "assets, the income from which is not subject to the tax" in question. Neither does the fact that a part of the interest obtained from the invested reserve was appropriated to such net additions furnish additional support for such contention. The entire addition could have been taken as well from premiums received. The particular source from which the net additions are made up is not important; the controlling fact on this branch of the injury is that all the income derived from the legal reserve was reported as income subject to tax-
58 ation and was so subjected. The legal reserve, therefore, is not within the part of sec. 207 which declares what shall not be included as "invested capital." What Congress seemingly had in mind in this general reference to "assets," the income whereof was not subject to excess-profits tax, was obligations of States and municipalities, other than bonds, such as short-term notes, which share with these bonds immunity from Federal taxation.

The Government next contends that this reserve is not within that part of section 207 (par. (a)), which declares what shall be "invested capital" for like purposes. This paragraph declares, as noted, that in the case of corporations such capital includes—

"(1) actual cash paid in, (2) the actual cash value of tangible property paid in other than cash for stock or shares in such corporation * * * at the time of such payment * * * and (3) paid in or earned surplus and undivided profits used or employed in the business, exclusive of undivided profits earned during the taxable year."

All three subdivisions of this paragraph are readily applied to corporations having capital stock, but their wording is inept to mutual corporations, which have no such stock. Subdivision (2) concededly is not applicable. As applied to a stock corporation subdivision (1)

includes only cash paid for capital stock, as cash paid in to surplus is made capital by subdivision (3), and this latter subdivision, similarly applied, is restricted to cash paid in to surplus and earned surplus or undivided profits used or employed in the business. But, inept as the language of these subdivisions is, when applied to mutual life insurance companies having no capital stock the Government insists that such companies are subject to the excess-profits tax provisions of this act, and further that unless this legal reserve can be brought within one or the other of these subdivisions,
59 it can not be treated as invested capital, and still further that such reserve is not comprehended within any of such subdivisions. As noted, sec. 200 of the same title (War excess-profits tax) declares that the term "corporation" as used in that title includes "insurance companies." Except for such inclusion there seemingly would not be even a plausible ground for the effort to include income derived from life-insurance business within the grasp of the excess-profits tax provisions of the act. But as there are capital-stock insurance companies that insure against fire and marine, as well as life, risks, something more than this definition is needed to bring mutual life insurance companies within the tax provisions of this title.

The very ineptness of the language of paragraph (a) of sec. 207 tends to support the plaintiff's contention that Congress had no purpose to subject mutual insurance companies to this war excess-profits tax, and that the insurance companies embraced in the definition of sec. 207 were confined to stock insurance companies. However, as mutual life insurance companies are not expressly excluded from the excess-profits tax provisions of the act, and assuming for the sake of argument that Congress had no intention of so excluding or exempting them, it must be further assumed that Congress did not intend to exclude them from the benefit of paragraph (a) of this section, notwithstanding its ineptness, if they had capital the income from which was subject to the excess-profits tax provisions of the act. For in this connection it must be emphasized that the relation of invested capital and net income lies at the very base of what is excess profit.

The Government concedes that all the plaintiff's assets over and above the legal reserve are invested capital within the meaning of such section, and the Commissioner's determination that the plaintiff had $14,719,043.76 as invested capital is based on such concession.
It insists, however, that this sum embraces all the assets of
60 plaintiff that fit in with the terms of subdivision (3), par. (a), of that section, and that that is the only subdivision which could be made applicable to such company.

To my mind the Commissioner's segregation of the plaintiff's assets into legal reserve and surplus is unsubstantial, and his determination that only the surplus constitutes the statutory "invested capital" is erroneous. Such a ruling, as pointed out by the plaintiff,

would produce strange results. The company which kept its premiums closest to the mathematical computation of cost would have the smallest surplus—Commissioner's invested capital—the largest earnings pro rata, and pay the largest excess-profits tax, while the company which secured the largest surplus through a liberal loading of the premiums would obtain the smallest earnings pro rata and pay the smallest excess-profits tax. In the absence of compelling reasons such an incongruous and inequitable result is not to be imputed to Congress. I fail to see how this so-called surplus of the plaintiff's assets may be held to be invested capital as paid in or earned surplus or undivided profits used or employed in the business if the legal reserve is not. True, the legal reserve is required by law, while the other assets are not so required, and the company has less control over the disposition of the legal reserve than over its remaining assets. But these facts furnish no basis for excluding the former from and including the latter in "invested capital." Both have a common source—namely, premiums paid in by the policyholders and income derived from investments. So much of each of these classes of assets as represents premiums is actual cash paid in to the insurance company by its members. These members—policyholders—are analogous to shareholders in a stock corporation. Subdivision (1), par. (a), of sec. 207 of the revenue act of 1917 is not expressly restricted to cash paid for shares of stock, and if mutual insurance companies are to be subjected to the imposition of war excess-profits taxes, then by analogy so much of the premium
61 payments made by such members, which is in excess of the actual cost of the insurance, should be held to come within such subdivision and be treated as "invested capital."

That Congress in the revenue act of 1918 amended this subdivision and expressly restricted it to cash paid in "for stock or shares" (sec. 326 (a) 1) affords no reason for holding that subdivision (1), as it stood in the 1917 act, must be so limited when applied to mutual insurance corporations. This added limitation is a distinct legislative recognition that without it the cash contribution to capital would not be so restricted. However, if it be given a retroactive effect as a legislative construction of the act of 1917, as contended by the Government, that would not prevent the application of the analogy just invoked. This subdivision would not, then, stand on the same basis as subdivision (2), admittedly inapplicable to the plaintiff, because this latter subdivision is further restricted to "tangible property," as the consideration given in payment for shares of capital stock, which does not find an equivalent or counterpart in any portion of the premiums paid by a member—policyholder—of a mutual life insurance company.

This reasoning by analogy in relation to subdivision (1) in principle is applicable to subdivision (3) of the same paragraph, which declares that the "paid in or earned surplus and undivided profits used or employed in the business" are invested capital. The surplus

here referred to is not to be construed as meaning one and the same thing—namely, earned surplus paid in. This subdivision is in the alternative and includes paid-in surplus, whether earned in the business or not. It frequently happens that shareholders—members—of a stock corporation, to augment the capital beyond that paid for shares of stock issued, contribute cash to create a surplus fund.

LaBelle Iron Works *v.* United States, 256 U. S. 377, 399.

62 While this, when so paid, is usually done at the beginning of the enterprise, there is nothing to prevent its being repeatedly done. The individual premiums paid by a policyholder of a mutual life insurance company, as already stated, being intentionally made larger in amount than supposed to be necessary to defray the actual cost of insurance, it follows that they cover more than protection. Included therein is something for investment, differing radically in this respect from premiums paid for fire, marine, or casualty insurance. Penn Mutual Co. *v.* Lederer, 252 U. S. 523, 533–4. This portion paid as investment is retained by the company, and so much thereof as is added to legal reserve so continues until the policy matures or is surrendered. No dividends are paid out of this reserve during the continuance of the life of the policy, but it is kept invested and reinvested to mature the outstanding policies. It, as well as its increment, enures to the benefit of the policyholders, and this reserve, at all times while in the possession of the company, is capital invested or held for investment. Therefore, all that part of these premiums that is larger than necessary for cost insurance is, by analogy, paid in, either as capital or surplus, for the purpose of carrying on the insurance business in which the members are mutually engaged. As a part of these excess payments in premiums are carried into the legal reserve, at least so much of this reserve as represents redundant payments of premiums, becomes capital or surplus and falls within subdivisions (1) or (3), or possibly both, and are as much "invested capital" as any cash paid for shares by shareholders of a stock corporation, or earned or paid-in surplus used and employed by such corporation in its business.

The legal reserve of the plaintiff had been accumulating for more than 60 years before the first of the herein-mentioned Federal income tax acts was passed. Those for the years beginning January first of each, 1872, 1909, 1911, 1912, 1913, and 1917, and their

63 proportion of premiums and interest derived from policyholders and investment of its reserve, respectively, are as follows:

Year	Premium	Interest	Total reserve
1872	$15,561,155.37	$4,094,988.63	$19,656,144.00
1909	33,569,857.14	76,554,892.93	110,124,750.07
1911	39,979,811.50	85,174,674.20	125,154,485.70
1912	45,591,484.45	89,872,590.70	135,464,075.15
1913	49,610,074.71	94,543,867.98	144,153,942.69
1917	70,302,157.10	115,956,638.90	186,258,796.00

These years have been selected for the following reasons: The New Jersey Legislature first required life insurance companies to maintain a legal reserve in the year 1872; in 1909 corporations were first subjected to a Federal income tax; the years 1911, 1912, and 1913 constitute the pre-war period referred to in the act of October 3, 1917, and which years that act (sec. 200) declared to be the standard for comparison in determining what was an excess profit subject to an excess-profits tax; and the year 1917 is the taxable year in question.

Only since the passage of the act of August 5, 1909 (36 Stat. 112, c. 6), which imposed a Federal excise tax on corporations, has the matter of deducting annual net additions to legal reserve from gross income become relevant as to the status of legal reserve in the matter of Federal income taxes. Whether the net additions beginning with 1909, having been once deducted in ascertaining the net income subject to a Federal income tax, may be included as invested capital under the act of 1917, is not necessary for present determination. Such a situation does not exist as to the net additions made prior to 1909, for these additions, whatever their source, rendered no such service. At the beginning of that year the total legal reserve was the sum of $110,124,750.07, and the interest derived therefrom was subject to the Federal income tax in that and subsequent years.

64 While, in my judgment, no part of the reserve can be said to be "assets" the income from which is not subject to the tax imposed by the act of October 3, 1917, or any of the other Federal income-tax acts, certainly no part thereof as it existed in the beginning of 1909 can be said to be that kind of assets. Surely at that time, though it had been built up from the income (premiums and interest) of the company, it had become transmuted into capital for investment, and there is nothing in the act of 1917 which excludes it from its definition of "invested capital." In this connection it should be noted that of the total reserve held on January 1, 1909, the sum of $33,569,887.14 was contributed from premiums. While this contribution at one time was income, it was the aggregate of the overpayments of premiums and became, as elsewhere noted, cash contribution by the members of the plaintiff, to be used and employed by it in its business of life insurance, and may by analogy, without doing violence to the statutory definition referred to, be held to be "invested capital" when dealing with the excess-profits tax provisions of the 1917 act.

Again, it should be noted that in the beginning of the year 1872—the year when the New Jersey statute first required the maintenance of a legal reserve—the reserve amounted to the sum of $19,656,144, which added to the amount allowed by the commissioner, viz, $14,719,043.76, as invested capital, exceeds the sum of $25,500,000, an amount concededly sufficient to avoid the imposition of any excess-profits tax for the year 1917.

In thus reasoning I have not overlooked the efforts made by representatives of the mutual companies, including the plaintiff, before the United States Senate and House committee having charge of the revenue bills of 1917 and 1918, urging amendments which would exclude such companies from the excess-profits tax provisions or which would include the legal reserve as invested
65 capital; nor am I unmindful of the absence of any of such provisions in the revenue acts of these years. One can not be unimpressed with such efforts or the failure of these committees to accede thereto. However, as the committees made no report on these suggested amendments, we have no legislative views as to the merits of either proposition. Both these efforts by the representatives and the absence of any official recommendation by these committees on the subject of these suggested amendments afford a basis for contradictory inferences.

As to these efforts: One is left in doubt whether the companies' representatives were urging the amendments, because of the belief that without their insertion the legal reserve could not be treated as "invested capital," or to remove the basis for the interpretation given to these representatives by the Commissioner that under the terms of the bill legal reserve could not be considered as invested capital, which interpretation had been brought by them to the attention of these legislative committees. (Hearings before Senate Subcommittee on Finance, 64th Congress, 2nd Session, on H. R. 20573, p. 52; also hearings before Committee on Ways and Means, House of Representatives, on revenue act of 1918, Part I, pp. 791, 798, 802, 811.)

As to the attitude of these committees: They may have concluded that this reserve should not be considered as part of such capital, or they may have been of the opinion that the terms of the bills, properly interpreted, were ample to give it that status. The record of these hearings shows that several members of the Senate committee doubted that these excess profits tax provisions as drawn (and subsequently enacted) affected mutual life insurance companies, and that at least one of them doubted the soundness of the referred to interpretation of the Commissioner. (Ib. Hearings before Senate committee, pp. 52, 53.)

66 In considering this phase of the question, it must be kept in mind that under Title II of this bill, to which these suggested amendments were directed, Congress was reaching out for the large, if not inordinate, gains that had been made by many of the manufacturing and trading companies by reason of the war. In the Finance Committee's report to the Senate, in relation to this bill, it was stated that these gains amounted to nearly $3,000,000,000 in 1916 and that they were expected to be further increased in 1917. It is not improbable that these committees may well have shared the general belief that life insurance conducted on the mutual plan

could not make these gains and therefore would not be affected by the proposed excess profits tax.

However, irrespective of which of these differing inferences be drawn from these occurrences before the congressional committees when these prospective acts were before them for hearing and consideration, it is well settled that in the absence of formal reports from committees, explanatory of certain provisions of such acts, the meaning thereof is not to be determined from the debates in Congress pending their passage. United States *v.* Union Pacific R. R. Co., 91 U. S. 72; United States *v.* Trans-Missouri Freight Assn., 166 U. S. 290; Downes *v.* Bidwell, 182 U. S. 244; Binns *v.* United States, 194 U. S. 486; Standard Oil Co. *v.* United States, 221 U. S. 1; Penna. R. R. Co. *v.* International Coal Co., 230 U. S. 184; Omaha Street Ry. Co. *v.* Interstate Commerce Commission, 230 U. S. 324; Lapina *v.* Williams, 232 U. S. 78; Duplex Co. *v.* Deering, 254 U. S. 443; Russell Co. *v.* United States, 261 U. S. 515. A fortiori this must be so as to discussions before a congressional committee where no report is made in regard thereto.

Penn Mutual Life Ins. Co. *v.* Lederer, 252 U. S. 523, is not authority for a contrary canon of interpretation. The marginal
67 reference (p. 534) to briefs and statements filed with the Senate committee, was merely to show that the alleged unwisdom and injustice of excluding one class of corporations from a tax exemption clearly and deliberately allowed to another class, had been strongly pressed upon Congress. The later cases of Duplex Co. v. Deering, supra, and Russell Co. v. United States, supra, reiterate the rule above stated.

In my opinion the plaintiff, at the beginning of the year 1917, had invested capital within the meaning of the revenue act of October 3, 1917, exceeding the sum of $25,500,000. As it is conceded that if such capital reached that sum, no war excess-profits tax was due from the plaintiff for the year 1917, the motion to dismiss the plaintiff's complaint must be denied, and under the stipulation between the parties the plaintiff is entitled to judgment for the amount claimed.

68 The United States District Court

[Title omitted.]

Judgment

(Filed February 26, 1924)

This matter coming on to be heard upon the defendant's motion to strike out the amended complaint herein, and the arguments of the respective parties upon said motion having been heard, and the parties having stipulated in open court that the decision on said motion shall be a final disposition of the controversy in this court, and the

court having considered the matter and being of opinion that the defendant's motion to strike out the complaint should be denied, and being of opinion that under the stipulation aforesaid the plaintiff is entitled to judgment for the amount claimed by it with interest and having assessed the plaintiff's damages at the sum of $83,779.70, with interest thereon from June 18, 1920,

It is therefore ordered on this 26th day of February, 1924, that the defendant's motion to strike out the complaint herein be denied and that judgment final be entered against said defendant and in favor of said plaintiff for the sum of $83,779.70, with interest at six per centum per annum thereon from June 18, 1920, to date of payment.

On motion of

PITNEY, HARDIN & SKINNER,
Attorneys for Plaintiff.

Let the above rule be entered.

JOHN RELLSTAB,
Judge.

69 The United States District Court

[Title omitted.]

Certificate of probable cause

(Filed March 5, 1924)

Recovery having been had against the defendant, Charles V. Duffy, in the above-entitled cause, which cause was for an act done by the said Charles V. Duffy, as collector of internal revenue for the Fifth District of New Jersey, in the performance of his official duty:

It is hereby certified by the court that the said Charles V. Duffy acted therein under the directions of the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, in the collection of the money for which recovery is had and paid the same into the Treasury, and that there was probable cause for the act done.

Dated March 1, 1924.

JOHN RELLSTAB,
Judge.

70 In United States District Court

[Title omitted.]

Exceptions

(Filed April 28, 1924)

1. The court found that the legal reserve of a mutual insurance company is a part of its invested capital for the purpose of computing its excess-profits tax.

Defendant's counsel prays an exception to the court's finding and an exception is allowed and sealed accordingly.

JOHN RELLSTAB, [SEAL.]
Judge.

2. The court found that plaintiff in the beginning of the year 1917 had invested capital within the meaning of the revenue act of October 3, 1917, exceeding the sum of $25,500,000.

Defendant's counsel prays an exception to the court's finding and an exception is allowed and sealed accordingly.

JOHN RELLSTAB, [SEAL.]
Judge.

71 3. The court found that no war excess-profits tax was due from plaintiff for the year 1917.

Defendant's counsel prays an exception to the court's finding, and an exception is allowed and sealed accordingly.

JOHN RELLSTAB, [SEAL.]
Judge.

4. The court denied defendant's motion to strike out complaint.

Defendant's counsel prays an exception to the court's ruling, and an exception is allowed and sealed accordingly.

JOHN RELLSTAB, [SEAL.]
Judge.

5. The court allowed judgment to be entered in favor of plaintiff and against defendant.

Defendant's counsel prays an exception to the court's ruling, and an exception is allowed and sealed accordingly.

JOHN RELLSTAB, [SEAL.]
Judge.

72 In United States District Court

[Title omitted.]

Assignments of error

(Filed April 28, 1924)

And the said Charles V. Duffy, collector of internal revenue of the United States for the fifth district of New Jersey, defendant and plaintiff in error, by Walter G. Winne, United States attorney, and Walter H. Bacon, jr., assistant United States attorney, comes and says that in the record of proceedings and in the findings of the court in said cause by the said District Court of the United States for the District of New Jersey there is manifest error in this, to wit:

1. The court erred in finding that the legal reserve of a mutual insurance company is a part of its invested capital for the purpose of computing its excess-profits tax.

2. The court erred in finding that plaintiff in the beginning of the year 1917 had invested capital within the meaning of the revenue act of October 3, 1917, exceeding the sum of $25,500,000.

3. The court erred in finding that no war excess-profits tax was due from plaintiff for the year 1917.

4. The court erred in denying defendant's motion to strike out the complaint.

73 5. The court erred in allowing judgment to be entered in favor of plaintiff and against defendant.

WALTER G. WINNE,
United States Attorney.
WALTER H. BACON, JR.,
Assistant United States Attorney.

74 In United States District Court

Clerk's certificate

UNITED STATES OF AMERICA,
District of New Jersey, ss.

I, George T. Cranmer, clerk of the District Court of the United States of America for the District of New Jersey, do hereby certify that the foregoing is the transcript of record as stipulated on writ of error in the case of the Mutual Benefit Life Insurance Company, plaintiff, vs. Charles V. Duffy, collector of internal revenue, defendant.

In testimony whereof I have hereunto subscribed my name and affixed the seal of the said court at Trenton, in said district, this 5th day of June, 1924.

[SEAL.]

GEORGE T. CRANMER,
Clerk.
By L. M. ZARP, *Deputy.*

75 In United States Circuit Court of Appeals for the Third Circuit

No. 3182 (List No. 56). October term, 1924

CHARLES V. DUFFY, COLLECTOR, PLAINTIFF IN ERROR,
vs.
MUTUAL BENEFIT LIFE INS. CO., DEFENDANT IN ERROR

Argument and submission

And afterwards, to wit, on the seventh day of January, 1925, come the parties aforesaid by their counsel aforesaid, and this case being called for argument sur pleadings and briefs, before the Honorable Joseph Buffington, Honorable Victor B. Woolley, and Honorable

J. Warren Davis, circuit judges, and the court not being fully advised in the premises, takes further time for the consideration thereof,

And afterwards, to wit, on the second day of March, 1925, come the parties aforesaid by their counsel aforesaid, and the court, now being fully advised in the premises, renders the following decision:

76 In United States Circuit Court of Appeals

[Title omitted.]

Opinion

(Filed March 2, 1925)

In error to the District Court of the United States for the District of New Jersey

Before BUFFINGTON, WOOLLEY, and DAVIS, *Circuit Judges.*

Per curiam. The collector of internal revenue for the Fifth District of New Jersey assessed upon the plaintiff a war excess profits tax of $83,779.70. This tax resulted from the Government's theory that the plaintiff's legal reserve fund of $186,258,796 was not "invested capital" within the meaning of section 207 of the income tax act of October 3, 1917. In its return for the year 1917 the insurance company declared its invested capital to be $202,685,846.45, which included its legal reserve fund. In amending the return the collector excluded this fund and allowed only $14,719,043.76 as "invested capital." This made the plaintiff's percentum of income very high. It brought this suit to recover the excess profits tax on the ground that its reserve fund was a part of its "invested capital." If this position is sound it would greatly decrease the rate of income. The defendant moved to strike out the complaint. In disposing of this motion, Judge Rellstab held that the legal reserve fund was "invested capital" within the meaning of the act and that the tax was assessed on the wrong basis. We are in accord with his conclusions and affirm the judgment on his able opinion as expressing our views.

[File indorsement omitted.]

77 In United States Circuit Court of Appeals

[Title omitted.]

Judgment

(March 2, 1925)

In error to the District Court of the United States for the District of New Jersey

This cause came on to be heard on the transcript of record from the District Court of the United States for the District of New Jersey, and was argued by counsel.

On consideration whereof it is now here ordered and adjudged by this court that the judgment of the said District Court in this cause be, and the same is hereby, affirmed.

J. WARREN DAVIS,
Circuit Judge.

[File indorsement omitted.]

78 In United States Circuit Court of Appeals

Mandate

(Filed April 16, 1925)

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America, to the honorable the Judges of the District Court of the United States for the District of New Jersey, Greeting:

Whereas, lately in the District Court of the United States for the District of New Jersey, before you or some of you, in a cause between the Mutual Benefit Life Insurance Company, plaintiff (defendant in error), and Charles V. Duffy, Collector of Internal Revenue for the Fifth District of New Jersey, defendant (plaintiff in error), judgment was entered in the said District Court on the 26th day of February, 1924, which judgment is of record in the office of the clerk of the said District Court, to which reference is hereby made, and the same is hereby expressly made a part hereof, as by the inspection of the transcript of the record of the said District Court, which was brought into the United States Circuit Court of Appeals for the Third Circuit by virtue of a writ of error by Charles V. Duffy agreeably to the act of Congress in such case made and provided, more fully and at large appears.

79 And whereas in the term of October, in the year of our Lord one thousand nine hundred and twenty-four, the said cause came on to be heard before the said United States Circuit Court of Appeals on the said transcript of record and was argued by counsel:

On consideration whereof it is now here ordered and adjudged by this court that the judgment of the said District Court in this cause be, and the same is hereby, affirmed.

PHILADELPHIA, *March 2, 1925.*

You, therefore, are hereby commanded that such execution and further proceeding be had in said cause, as according to right and justice, and the laws of the United States, ought to be had, the said writ of error notwithstanding.

Witness, the Honorable William Howard Taft, Chief Justice of the Supreme Court of the United States, at Philadelphia, the six-

teenth day of April, in the year of our Lord one thousand nine hundred and twenty-five (1925).

SAUNDERS LEWIS, Jr.,
Clerk of the U. S. Circuit Court of Appeals, Third Circuit.

[File indorsement omitted.]

80 In United States Circuit Court of Appeals

Clerk's certificate

UNITED STATES OF AMERICA,
Eastern District of Pennsylvania Third Judicial Circuit, Set.

I, Saunders Lewis, jr., clerk of the United States Circuit Court of Appeals for the Third Circuit, do hereby certify the foregoing to be a true and faithful copy of the original record and proceedings of this court in the case of: Charles V. Duffy, Collector, plaintiff in error, vs. Mutual Benefit Life Ins. Co., defendant in error, No. 3182, on file, and now remaining among the records of the said court in my office.

In testimony whereof I have hereunto subscribed my name and affixed the seal of the said court, at Philadelphia, this 5th day of May, in the year of our Lord one thousand nine hundred and twenty-five, and of the Independence of the United States the one hundred and forty-ninth.

[SEAL.] SAUNDERS LEWIS, Jr.,
Clerk of the U. S. Circuit Court of Appeals, Third Circuit.

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45 Supreme Court of the United States

Order allowing certiorari

Filed June 1, 1925

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Third Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

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